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ANNUAL REPORT 2001

BRITISH COLUMBIA

Labour Relations Board

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BRITISH COLUMBIA

LABOUR RELATIONS BOARD

2001
ANNUAL REPORT

Ministry of Skills Development and Labour
Honourable Graham Bruce, Minister

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BRITISH COLUMBIA

LABOUR RELATIONS BOARD

March 28, 2002

The Honourable Graham Bruce
Minister of Skills Development and Labour
Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Mr. Minister:

RE: Labour Relations Board 2001 Annual Report

I am pleased to forward the 2001 Annual Report of the Labour Relations Board for the year ended December 31, 2001. This Report has been prepared for your review pursuant to Section 157(2) of the *Labour Relations Code*.

Yours truly,
LABOUR RELATIONS BOARD

Brent Mullin
Chair

Enclosure

900 - 360 WEST GEORGIA STREET, VANCOUVER BC V6B 6B2
TELEPHONE: (604) 660-1300 FACSIMILE: (604) 660-1892

CHAIR'S MESSAGE

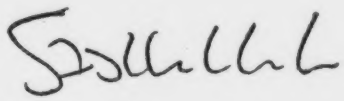
The Board faced significant challenges in 2001. In addition, amendments to the *Labour Relations Code* reinstituted the mandatory vote on all certification applications. Since 1993 the Board has been operating under Code provisions which only required a supervised secret ballot vote in a minority of certification applications. These administrative changes were adopted quickly and efficiently by the Board Registry and the various Employment Standards offices throughout the province.

In the latter part of the year the Board addressed the Provincial Government's Core Review, Administrative Justice Project, Workplace Tribunal Review, and regulation reduction program. In addition, the Executive Committee has been involved in numerous meetings related to anticipated substantial budget cuts. All of these reviews will continue in 2002, with the Budget anticipated early in the year.

A noteworthy development during the year was the introduction of settlement conferences in the majority of duty of fair representation complaints. After examining the file a Vice Chair can recommend scheduling a settlement conference. The majority of such conferences led to a resolution. This rendered adjudication unnecessary and meant a substantial saving of Board resources. Based on the experience to date it appears likely the Board will continue this practice.

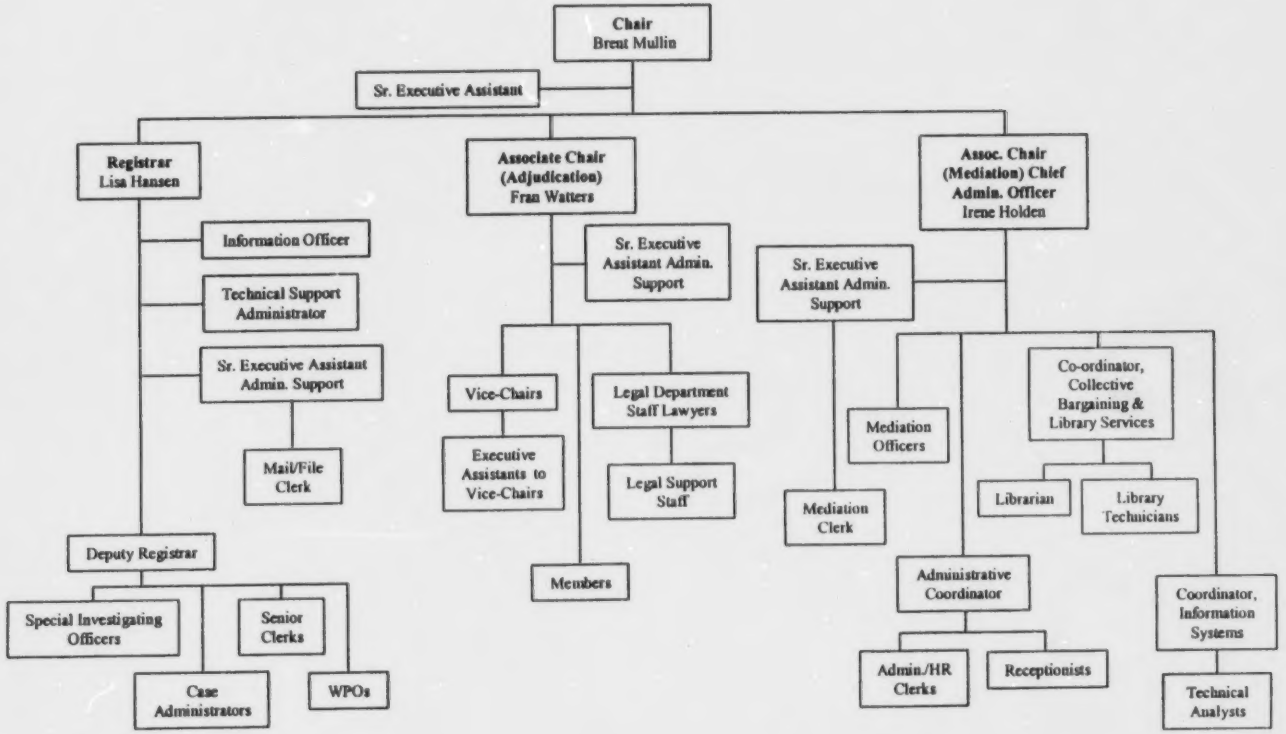
In addition to continuing development of the Board's web site, a thorough revision of the Board's Practice Manual has been completed and will be published by the Queen's Printer early in the new year.

At year end, my term as Chair is drawing to a close. Brent Mullin will become the new full-time Chair early in 2002. Given the great challenges the Board will face as a result of the various reviews referred to above, and anticipated budget cuts, Brent, the Executive Committee, members of the Board and Board staff will need the continued full support and cooperation of the labour relations community to be able to maintain satisfactory service delivery. I am confident that support will be forthcoming.



Stephen Kelleher, Q.C.
Chair

Labour Relations Board
Organizational Chart
January 2002



I. THE BOARD

A. GENERAL OVERVIEW

The *Labour Relations Code* (the "Code") establishes the Labour Relations Board. The statute grants the Board exclusive jurisdiction to hear and determine applications and complaints under the Code and to make orders under the Code that it deems appropriate.

The Code governs all aspects of collective bargaining amongst the provincially-regulated employers and employees to whom the Code applies. This includes the acquisition of collective bargaining rights, the process of collective bargaining, the settlement and regulation of disputes in both the public and private sectors, and the regulation of the representation of persons by their bargaining agents. In addition to administering and enforcing the Code, the Board is charged with responsibility in labour relations matters under several other statutes -- see Table B in the Appendix to this Report.

In carrying out its mandate, the Board must at all times have regard to the purposes and objects of the Code. These are set out in Section 2(1):

2. (1) The following are the purposes of this Code:

(a) to encourage the practice and procedure of collective bargaining between employees and trade unions as the freely chosen representatives of employees;

(b) to encourage co-operative participation between the employers and trade unions in resolving workplace issues, adapting to changes in the economy, developing work force skills and promoting workplace productivity;

(c) to minimize the effects of labour disputes on persons who are not involved in the dispute;

(d) to promote conditions favourable to the orderly, constructive and expeditious settlement of disputes between employers and trade unions;

(e) to ensure that the public interest is protected during labour disputes;

(f) to encourage the use of mediation as a dispute resolution mechanism.

In order to accomplish this expansive mandate, the Code establishes the Board's administrative structure. Section 115(3) of the Code provides that the Board shall consist of a Chair, Vice Chairs, and as many other members, equal in number, representative of employers and employees respectively, as shall be considered necessary and appointed by the Lieutenant Governor in Council. The Chair is the head of the Board. Section 116 of the Code requires that there be two divisions of the Board -- the Mediation Division and the Adjudication Division. The Chair designates one of the Vice Chairs to act as Registrar, one to act as Associate Chair of the Mediation Division and one to act as Associate Chair of the Adjudication Division. The Chair, along with the Associate Chair (Adjudication), establishes panels to proceed with applications or complaints under the Code. Panels may be composed of the Chair, Vice Chair(s), and members in accordance with Section 117(4) of the Code.

B. OFFICE OF THE CHAIR

As head of the Board, the Chair has the ultimate responsibility to oversee the

administration of the Board and the Code. The Associate Chairs of Mediation and Adjudication and the Registrar report directly to the Chair. The Chair may sit as a panel, either with or without Vice Chairs and/or other members. The Chair presides at all proceedings of the Board and on all panels of which the Chair is a member.

C. REGISTRY

Every application received by the Board, except those relating to mediation, is processed through the Registrar's office. Administration and progress of each non-mediation case is overseen by the Registry until the matter is finally disposed of. Four case administrators, each dealing with a geographic area of the Province, are responsible for initiation of applications and the conduct of files.

Processing of all non-mediation applications through the Registry enables the Board to utilize computerized case monitoring/management to achieve effective and speedy processing of cases.

The Registry processes applications on either an expedited or non-expedited basis. Legislated time frames, combined with established Board policies and procedures, result in approximately 51 percent of applications receiving expedited processing. Part 5 applications can require adjudication within 24 hours. Certain unfair labour practice complaints must be adjudicated within three days. Others such as certification and decertification applications are normally processed within approximately one week of receipt.

On certification and decertification applications, case administrators are responsible for completing all necessary procedures before files are forwarded to Adjudication for a hearing. This includes written notification to parties, initiation of investigations by Industrial Relations Officers (IROs) and requests for written submissions. Accordingly, administrative staff must be familiar with legal principles and Board case law and policies.

The Board continues to monitor its administrative procedures with the assistance of the Practice and Procedure Committee, comprised of practitioners in the labour relations committee. For some time concerns had been expressed about some aspects of the administration of the certification and decertification processes. The employer community had expressed concerns that increased verification of union membership evidence was necessary. Labour had expressed concerns about the validity of employee lists provided by employers to Industrial Relations Officers.

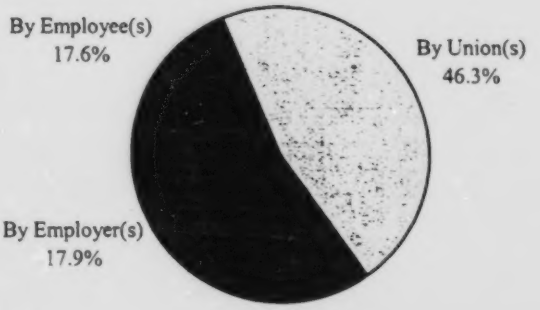
In response to these concerns, following extensive consultation with the labour relations community, the Board introduced, on a trial basis, a frequent "random audit" procedure to be carried out by Industrial Relations Officers when investigating applications for certification. (Subsequently, the procedure was extended to decertification applications.) With a regular frequency, not revealed to applicants, the Board assigns certain applications for audit. When an application is designated for audit the Industrial Relations Officer is required to take additional steps to check payroll records and, in some cases time cards. The union membership cards or revocation forms are checked for correct signatures by comparing to signatures on file with the employer such as TD 1 forms. The Officer is to advise the Board of any discrepancies found in the audit and to undertake any

follow-up investigation directed by the Board.

Effective August 16, 2001 changes to the Code required that secret ballot votes be held on all certification applications.

This Code amendment meant that the Registry had to put in place appropriate administrative structures very quickly. This challenge was met through the efforts of the case managers in the Registry and Industrial Relations Officers in Employment Standards offices throughout the province. The Board continues to conduct random audits.

2001 Applications and Complaints by Type of Applicant



Informal dispute resolution is an important part of the Board's operations and is used extensively during the processing of applications and complaints. Under the direction of the Deputy Registrar, cases requiring immediate informal dispute resolution are assigned to Special Investigating Officers (SIOs). The vast majority of their case load involves expedited matters such as unfair labour practice complaints, certifications, and Part 5 applications dealing with strikes, lockouts and picketing.

Assistance by SIOs through the informal process can be obtained by the parties or the adjudicator at any stage of proceedings, including case management meetings and after formal hearings have commenced.

These informal settlement discussions are on a "without prejudice" basis. That is to say, a party cannot subsequently raise what was said in such discussions in any formal proceeding. However, settlement agreements reached on issues during the informal proceedings are binding on the parties and will be enforced by the Board.

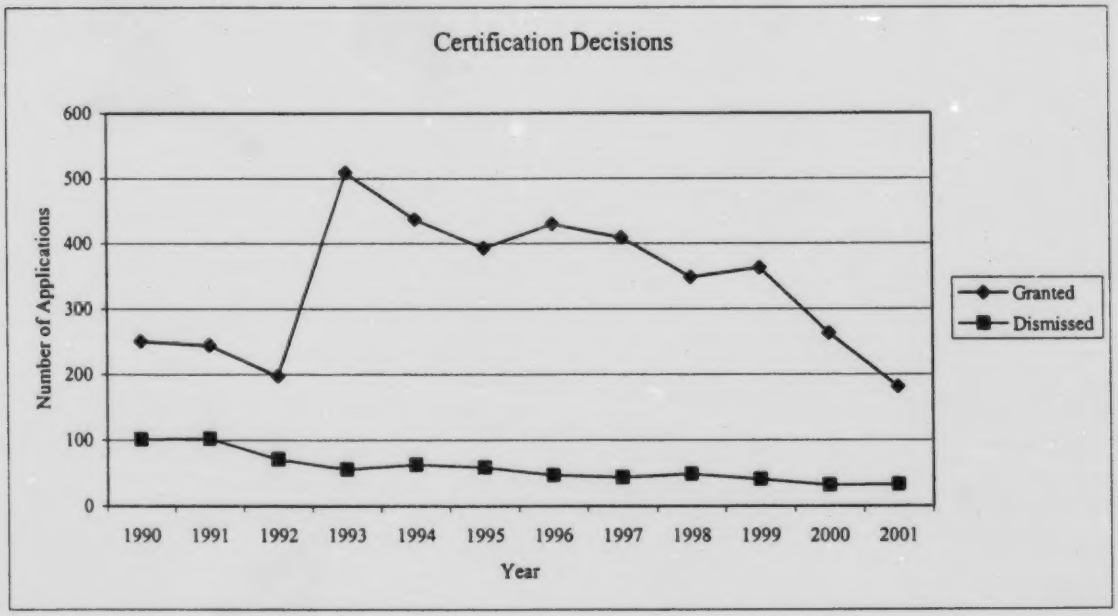
The informal process achieves a very high success rate. As shown in Table 11 of the statistical tables, approximately 65

percent of unfair labour practice complaints and Part 5 complaints referred to officers are settled.

This informal dispute resolution process helps the Board and the parties make more effective use of resources and personnel, and substantially reduces the time needed to conclude cases, thus reducing expenditures. In addition, by fostering negotiated settlements between the parties, the process furthers the purposes of the Code by minimizing, where possible, decisions imposed by a third party.

Similar valuable services are provided throughout the Province by Industrial Relations Officers of the Employment Standards Branch of the Ministry of Labour. For example, every application for certification or decertification requires a report by an Industrial Relations Officer. Such reports are public, with only names and numbers remaining confidential to the Board.

Both SIOs and Industrial Relations Officers (IROs) also provide considerable assistance through written reports which may involve fact finding, narrowing the issues to be adjudicated, and interviewing individual employees and employers on a wide variety of issues. In 1998 the Board initiated a joint program with the Employment Standards Branch which brings IROs to the Board for a three month program working with the SIOs. This broadens the experience of the IROs and benefits both the community and the IRO.



In addition to administering the Registry, the Registrar, as a Vice Chair of the Board, may chair or sit as a member of an adjudication panel, and as a sole panel member, may dispose of certain applications where summary disposition is appropriate. This leads to the speedy disposition of many types of applications.

The Deputy Registrar has responsibility for administering the informal process and also deals with Section 12, duty of fair representation applications, most of which require additional information before the Registry can process them. In 2000, 108 letters were sent seeking additional information before processing Section 12 Applications.

In accordance with Section 122(3) of the Code, the Board appointed its first Information Officer, effective February 1, 1994. His responsibilities to date have encompassed two main areas: handling incoming inquiry calls, and preparing written material for the public and the labour relations community.

The Information Officer deals with between 30 and 40 calls per day, from employers, unions, individual employees and media representatives.

The Board's publications include an *Employer's Guide to the Union Certification Process*. This plain language guide is sent to employers along with the Notice of Certification Application, to clarify their rights and responsibilities under the Code. The Guide is also available in French, Chinese and Punjabi translations. The day after the Notice and Guide are sent to employers, the Information Officer sends a letter to employers who have not previously been certified, offering to answer any questions about the Code or certification procedures before the hearing date or on the morning of the certification hearing.

A companion publication, *Questions and Answers for Employees Regarding the Union Certification Process,* has been developed following an extensive consultation process with the labour relations community. It provides information to employees in plain language concerning the certification process.

Another publication prepared by the Information Officer, the Board's Practice Manual has now been in use since April, 1995. An updated version of the Manual will be available in 2001.

The Board's web site was officially launched in late 1999. The site includes information concerning the Board's processes, hearing schedules and recent Board decisions. The site is a work-in-progress and the Board welcomes input from the public to help improve the information provided. The web site address is www.lrb.bc.ca.

D. ADJUDICATION DIVISION

The Adjudication Division is responsible for hearing and deciding applications brought under the *Labour Relations Code*. The Division also attempts wherever possible to settle disputes without formal adjudication through case management and alternative dispute resolution.

Issues requiring adjudication include applications for the acquisition and termination of bargaining rights; unfair labour practice complaints; duty of fair representation complaints by individual

employees; common and successor employer applications; reviews of arbitration awards; complaints respecting strikes, lockouts, picketing and other conduct regulated by Part 5 of the Code, including the replacement worker and essential services provisions; and applications for reconsideration of Board decisions.

On average, close to 1500 cases are adjudicated each year. The number of cases assigned for adjudication in 2001 was down slightly from the average. A comparison of cases assigned for adjudication and adjudicated for the past six years is set out in the accompanying table. The Adjudication Division published 481 decisions, a slight decrease from the year before where 508 decisions were issued. Summaries of the key cases are found elsewhere in this Report.

A major portion of the Division's workload continues to be the adjudication of expedited applications (including certifications, unfair labour practice complaints and Part 5 applications). During 2001, expedited applications comprised about 60% of cases received in the Board's major adjudication areas.

This year, the Board initiated a new project designed to more efficiently and effectively resolve Section 12 complaints. Where practical, incoming Section 12 complaints were referred to a mandatory settlement conference with a Vice-Chair. The results were very encouraging. On average, the conferences took a half-day. Approximately 65% of the cases settled. This represents a considerable savings of Adjudication resources, both in terms of reducing the need for original decisions and decreasing the number of reconsideration applications.

The work of the Adjudication Division was carried out by 14 Vice-Chairs (12 full-time and two part-time). Four Vice-Chairs were renewed this year: John Hall, Sharon Kearney, Laura Parkinson and Walter Pylypchuk. Robert Pekeles resigned from his position of Vice-Chair; his position has not yet been filled. With a full complement of Vice-Chairs in place for most of the year, the backlog of outstanding cases fell to 33. There were also 44 part-time Members, representing either employers or employees, for assignment to hearing panels.

A staff of three full-time lawyers and the senior staff lawyer provided legal services to the Adjudication Division. The lawyers provide a wide range of support to the Board, including legal research, attending hearings, maintaining precedents and other resources, and representing the Board in judicial review proceedings before the courts.

	1996	1997	1998	1999	2000	2001
Applications Assigned for Adjudication	1,498	1,545	1,584	1,603	1,365	1,258
Applications Adjudicated	1,414	1,569	1,562	1,628	1,404	1,293
Applications Outstanding at Year End	306	369	435	410	371	336

E. MEDIATION DIVISION

The Mediation Division offers assistance in collective bargaining, facilitation of joint sessions which enable employers and trade unions to improve their working relationship and collective bargaining information. These and other services are provided under the direction of the Associate Chair (Mediation).

Information about the services available from the Mediation Division can be obtained by telephone at (604) 660-9656 or via the Board's web site (www.lrb.bc.ca). This information includes various practice guidelines on the sections of the *Labour Relations Code* administered by the Mediation Division.

Collective Bargaining Mediation (Sections 55 and 74)

Collective bargaining mediation involves assistance to employers and unions to conclude the terms of first or renewal collective agreements. Mediators utilize a variety of techniques in an effort to assist the parties to reach mutual agreement. In certain cases, the mediator may issue recommendations for settlement.

The majority of mediation appointments are made under Section 74 of the Code and involve the renewal of existing collective agreements. A lesser number of first collective agreement mediator appointments are made under Section 55. In 2001, mediators were appointed to 175 cases under Section 74 and 27 cases under Section 55. Mediators were also involved in a further 44 cases which were carried over from previous years.

Essential Services (Section 72)

The mediation of essential services in certain public sector disputes is also part of the mandate of the Mediation Division. In 2001, mediators were involved in mediating the establishment of essential service levels in over 250 health care facilities. Mediation also assisted the parties when education was declared an essential service and new language was added to Section 72 of the Code.

Conflict Management

During 2001, the Mediation Division revised the focus of its conflict management initiatives, not only in keeping with its mandate under the Code, but also with a view to designing individualized and relevant programs. The focus of the programs places greater emphasis on the analysis of conflict and its ongoing management in the workplace.

At the joint request of employers and trade unions, the Mediation Division consults with the parties in an effort to understand the nature and role of conflict in the parties' organization. Current methods of dispute resolution are also examined in the context of the organizational culture within which they operate. The Mediation Division works with the stakeholders to design implement conflict management processes that focus on systemic change.

Guidelines used in the design process include: stakeholder participation, the adoption of preventative methods of alternative dispute resolution including training in interest-based problem solving, the use of interest based and rights based processes, promotion of dispute resolution throughout all levels of the organization.

Openness and broad based participation are encouraged and emphasis is also placed on the importance of feedback and continuous self-evaluation.

Relationship by Objective Program

One of the forums for exploring conflict and designing conflict management systems has been the Relationship by Objectives program. The program which was originally designed as a two-day exploratory retreat has been refocused to place greater emphasis on skills in effective communication and interest based problem solving.

In a preliminary assessment, Mediation staff determine if the parties are committed to make the changes needed in their relationship to foster a more positive climate in the workplace. The assessment is conducted through various forms of information gathering, including meetings, surveys, and/or focus group discussions. Following this initial assessment, a representative sampling of the stakeholders attend a two or three-day session away from the workplace. Tow mediators normally facilitate the session. Participants receive skills training, identify conflicts affecting their relationship, and collectively develop strategies to address and manage the identified conflicts. These strategies take the form of written action plans with specific goals, timeframes for achieving the goals and assignment of specific individuals responsible for ensuring that action plans are carried out.

Labour Management Consultation Committees

Section 53 of the Code requires employers and unions to establish joint consultation committees to promote the cooperative resolution of workplace issues. Using some of the same conflict management techniques described above, the Mediation Division offers assistance to employers and unions in meeting this obligation. Assistant is offered for the establishment of new committees and/or improvement in the effectiveness of existing committees. These sessions are usually scheduled for half a day to a maximum of a day, depending on the needs of the parties.

Grievance Mediation

Mediators often provide assistance to employers and unions to resolve grievances or other problems related to the operation of their collective agreement. A joint written request can be submitted to the Associate Chair (Mediation) to obtain grievance mediation assistance. In the year 2001, 44 requests were received. Each request often contained many grievances. The majority resulted in mediated settlements of the grievances.

Collective Bargaining Information System

The Mediation Division gathers and publishes information on collective bargaining and related labour relations matters. The Collective Bargaining Information System utilizes a costing model which measures total compensation, including the costs of both wage and benefit improvements. End rate costing is used to measure the level of the compensation changes at the end of each contract year.

The data contained in the Collective Bargaining Information System is available to interested parties on-line on a fee for service basis. Users can conduct

customized searches of the data based on an industry sector, work performed, geographic location and length of the collective agreement. Interested parties may contact the Mediation Division for more information on the system and free demonstrations.

The Division also publishes the "Collective Bargaining Information Monthly Summary". This publication is available on a subscription basis and contains information on settlements and overall settlement trends by year on a private-public sector and industrial sector basis. The publication also contains labour market information compiled by Statistics Canada, lists of certifications and variances granted by the Labour Relations Board, and a list of arbitration awards received by the Collective Agreement Arbitration Bureau.

F. ADMINISTRATION

Information Systems

The Board has a HP9000 computer running a HP-UX operating system. The in-house applications running on the computer are written in PowerHouse and the information/data collected is stored in an Interbase database. The Board is also running Microsoft Windows NT Server 4.0 as a file and print server.

The principal computer applications contained on the in-house computers run in the following areas: case management, word processing, office automation and end user computing, statistical collection and distribution, library management and computer aided research.

Human Resources and Administration

The Human Resources and Administration group is responsible for handling personnel matters including payroll and benefit administration. The department also helps manage the Board's financial affairs (e.g., accounts payable/accounts receivable) and oversees maintenance of the Board's offices, including telephones, office equipment and security.

Office and Technical Support

All Board departments are ably assisted in the performance of their duties by various office and technical support staff. These include technical support persons, word processors, executive assistants, and administrative support personnel.

G. LIBRARY

The Labour Relations Board library is dedicated to serving the labour relations community in B.C. This modern facility houses an up-to-date specialized collection in labour and employment law and is geared to provide assistance to the legal and labour relations communities and the public. As well, computers provide access to on-line catalogues and LRB databases.

The library is the sole depository for B.C. collective agreements which employers and unions are required to file with the Board. This collection totals 6,000 agreements. The library maintains printed lists of the agreements on file: one by union and one by employer. Patrons may phone the library to inquire about the availability of a collective agreement. In addition, patrons may visit the library to research the printed lists, and to make copies of the agreements themselves.

Patrons outside the Lower Mainland may request photocopies of the agreements be mailed to them for a service charge.

During the period from January to December 2001 the usage of the library was 15 percent by in-house personnel and 85 percent by the public. In addition to day-to-day services (in person or by phone), library staff provide orientation tours for individuals and groups. In the period from January to December 2001, library staff handled approximately 4,250 information queries and welcomed 4,200 patrons.

II. BOARD MEMBERS AND MEDIATORS

In 2001, the Board consisted of the following members:

EXECUTIVE

STEPHEN KELLEHER, Q.C., *Chair*

Stephen Kelleher has been a member of the British Columbia Bar since 1974. He was engaged in the private practice of labour law until 1980. He served as Vice-Chair and then Chair of the Labour Relations Board until 1984. Since that time he has worked as an arbitrator and mediator in labour relations matters and commercial disputes in both the public and private sectors. He has served as an Industrial Inquiry Commissioner in various labour disputes. He served as Commissioner under the *Canada Labour Code* inquiring into hours of work for grain elevator agents in Western Canada. He served with Stan Lanyon, Q.C., as a two-person Construction Industry Review Panel studying construction industry labour relations issues and recommending legislative change for the Minister of Labour of British Columbia in 1997 - 1998. Mr. Kelleher accepted a part-time appointment as Chair on October 11, 2000. He also serves as a member of Canada's Public Service Staff Relations Board as well as the Yukon Public Service Staff Relations Board. Mr. Kelleher completed his service as Chair in January 2002. Brent Mullin is his successor as Chair

FRANCES R. WATTERS, *Associate Chair (Adjudication)*

Fran Watters obtained her Bachelor of Laws degree from the University of Victoria in 1983. She then clerked with the British Columbia Supreme Court for one year before she was hired by the Labour Relations Board as a staff lawyer. In 1988 she joined the Vancouver firm of Alexander, Holburn, Beaudin & Lang where she became a partner in 1992. While at Alexander, Holburn, Beaudin & Lang, Ms. Watters' professional practice focused on labour, employment and human rights law. Ms. Watters was appointed to her current post in July of 1998.

IRENE HOLDEN *Associate Chair (Mediation)*

Irene Holden was appointed as Associate Chair (Mediation) in October of 2000, after acting in that capacity since December of 1999. Ms. Holden was a Mediator with the Board from 1992 until 1997, at which time she was appointed as a Vice Chair in the Adjudication Division, until her return to the Mediation Division as Associate Chair. Prior to coming to the Board in 1992, she was the Senior Labour Relations Officer at B.C. Hydro where she acted for the employer in all labour relations matters, including collective bargaining, grievance/arbitration handling. Ms. Holden received her education in Nova Scotia, primarily at Acadia and Dalhousie Universities.

LISA HANSEN, *Registrar*

Lisa Hansen was appointed Registrar effective April 7, 1997. Mr. Brown also serves as a Board Mediator. At the time of her appointment she was Executive Co-Director of the Health Sciences

Association of B.C. HSA represents over 10,000 health care professionals in British Columbia. Prior to becoming Executive Co-Director in 1993, Ms. Hansen was Assistant Executive Director one year and Senior Labour Relations Officer for 12 years. She became active in HSA while working as a Registered Medical Laboratory Technologist. Ms. Hansen was a part-time Board Member from 1994 until her appointment as Registrar. On October 11, 2000, Ms. Hansen was reappointed to a further five-year term.

VICE-CHAIRS

MARK J. BROWN, *Vice Chair and Mediator*

Mark Brown was appointed to the Board as Vice Chair commencing February 1, 1996. Mark also serves as a Board Mediator. Mark graduated from Ryerson in Toronto in 1977 with a Bachelor of Business Management Degree. He joined the Canadian Red Cross as an Administrator of one of its centers in Toronto. In 1981 he joined Versa Services Ltd. as its Industrial Relations Manager responsible for collective bargaining and labour relations for Canada. From 1985 to 1995 he was employed by the Health Employers Association of B.C., and one of its predecessor associations. As the Director of Consulting Services, he was responsible for collective bargaining, third party hearings and resource management for the community care sector. In 1995 he briefly held a similar position for the Community Social Services Employers' Association before joining the Board.

MICHAEL FLEMING, *Vice Chair*

Michael Fleming obtained a B.A. from Simon Fraser University in 1978 and worked with the Ministry of Human Resources as a social worker until 1983. He then worked for the Canadian Farmworkers Union appearing before a number of tribunals and courts on behalf of the members. He received a LL.B. in 1988 from the University of British Columbia and then articled and practised law with the firm of Rush, Crane & Guenther until 1990. From 1990 to his appointment to the Labour Relations Board as Vice Chair in 1997, he was employed by the BCGEU holding several positions and appearing before various tribunals and arbitrators on behalf of the Union and its members.

JOHN B. HALL, *Vice Chair*

John Hall obtained his Bachelor of Laws degree from the University of British Columbia in 1980. He then articled and became an associate with the Vancouver law firm of Alexander, Holburn, Beaudin & Lang where his professional practice was restricted to labour and employment law. Mr. Hall served as a Vice Chair of the Labour Relations Board from 1985 to 1987. He returned to his former firm where he became a partner in 1988. Mr. Hall continued his labour and employment law practice, with an increasing portion of his work being appointments as a neutral in unjust dismissal adjudications and labour arbitrations. He was appointed to the Board as Associate Chair (Adjudication) in 1992 and resigned effective May 31, 1998. He was re-appointed as a part-time Vice Chair for a one-year term, commencing December 14, 1998 and re-appointed to a further one-year term.

M. A. (Tony) HICKLING, *Vice Chair*

Tony Hickling taught labour law at the University of British Columbia from 1966 to 1969, and at the University of Western Ontario from 1969 to 1974 and at the University of British Columbia again from 1974 to 1999. In addition to his LL.B and Ph.D. degrees, he received a LL.D. from the University of London in 1976. He has been very active as an arbitrator, as well as editing *Western Labour Arbitration Cases* and organizing arbitration seminars sponsored by the Continuing Legal Education Society. In addition to many article on arbitration and labour law, he is author of "Citrine's Trade Union Law", 3rd edition, 1967 and "Labour Disputes and Unemployment Insurance Benefits in Canada and England", CCH Canadian, 1975. Tony advises that contrary to popular mythology, he has issued only one arbitration award 100 pages in length. He was appointed Vice Chair in September, 1999.

BARBARA JUNKER, *Vice Chair*

Barbara Junker graduated from the University of British Columbia in 1977 with a Bachelor of Commerce Degree. After graduation she worked at Vancouver Hospital and subsequently at Shaughnessy Hospital. In 1983, she joined the accredited bargaining agent for health care employers and was involved in consulting and managing health labour relations in B.C. Before her appointment to the Board, Ms. Junker was responsible for advising on and implementing plans to address strategic issues in health care, as well as planning and research on health labour relations and collective bargaining issues. Ms. Junker was appointed as a Vice Chair in 1994.

SHARON KEARNEY, *Vice Chair*

Sharon Kearney is a graduate of the University of British Columbia where she received a B.A. (Honours) in 1981 and an LL.B. in 1986. She articled in British Columbia and was called to the B.C. Bar in 1987. She practiced management side labour law with the firm of MacDonald Shier from 1987 to 1989. She then joined the Labour Relations Branch of the British Columbia Provincial Government, where she represented the interests of the Government as employer in grievance arbitrations, Labour Relations Board matters and collective bargaining. In 1993 Ms. Kearney joined Ladner Downs where she practised labour and administrative law representing employers in a wide range of matters. She has been a regular lecturer with the Human Resources Managers Association and has contributed articles for publication with the Continuing Legal Education Society of British Columbia. Ms. Kearney was appointed as a Vice Chair on December 14, 1998.

CATHERINE McCREARY, Vice Chair

Catherine McCreary received her LLB from the University of Calgary in 1983. From 1984 to 1997 she practiced labour law in Calgary with the firm of McGown Johnson acting mainly for unions and employees. In 1996 she was elected to the Board of Directors of First Calgary Savings and Credit Union. In 1997 Ms. McCreary moved to Vancouver where she accepted the position of in-house counsel to Teamsters Local 213. In 1999 she was elected to the Board of

Directors of VanCity Savings and Credit Union. On October 11, 2000 Ms. McCreary was appointed a Vice Chair of the Labour Relations Board.

GREG MULLALY, Vice Chair

Greg Mullaly took degrees in philosophy at Dalhousie University (B.A. (Hons.), 1975) and the University of Oxford (B. Phil., 1978) before returning to Dalhousie University to study law. He received an LL.B. in 1981 and then practiced labour law for nineteen years, most recently at Victory Square Law Office. Mr. Mullaly was appointed to the Labour Relations Board in June, 2000.

JAN O'BRIEN, Vice Chair

Ms. O'Brien was a Member of the Labour Relations Board for nine years before her appointment as Vice Chair in June 2000. She was co-ordinator of the Capilano College Labour Students Program for two years. She is past President of Local 115-M of the Communications, Energy and Paperworkers' Union and was Administrative Officer of its predecessor, the Vancouver Newspaper Guild. During her 10 years with the union, Ms. O'Brien headed several sets of collective bargaining and led organizing drives. She was a Vice-President of the B.C. Federation of Labour, where she chaired the Women's Rights Committee. She is a former newspaper reporter and a graduate of the University of British Columbia. Ms. O'Brien attended the Harvard University Trade Union Program and is currently working on her MBA at Simon Fraser University.

LAURA PARKINSON, Vice Chair

Laura Parkinson received her LL.B. from the University of British Columbia in 1983 and her LL.M. in Labour Law and Constitutional Law from Queen's University in 1986. Ms. Parkinson served as a Staff Lawyer with the Labour Relations Board in 1986 and 1987. She then returned to the law firm of Baigent, Jackson, Blair where she had previously practised, and remained with that firm and its successor, Victory Square Law Office, until her appointment as a Vice Chair on August 1, 1995.

ROBERT PEKELES, *Vice Chair*

Robert Pekeles obtained his LL.B. from the University of Toronto in 1983. After articling with the law firm Swinton & Company he was called to the Bar in 1984. He served as a staff lawyer with the Labour Relations Board from 1984 to early 1986. Subsequently, he practised labour law with Rankin & Company where he acted for trade unions in various sectors including construction, mining, trucking, office and municipal. From 1989 until his appointment to the Labour Relations Board as a Vice Chair in 1994, he was legal counsel for the International Union of Operating Engineers, Local 115. Mr. Pekeles resigned in August, 2001.

VLADIMIR (WALTER) PYLYPCHUK, *Vice Chair*

Walter Pylypchuk received his law degree from the University of Western Ontario and was called to the Bar of Ontario in 1978 and the Bar of British Columbia in 1991. He was in private practice from 1978-80, and then joined the Federal Department of Justice for two years during which time he was seconded to Canada Post Corporation. From 1983 to 1989 Mr. Pylypchuk practised as in-house counsel for Canada Post. He served as a Vice Chair of the Industrial Relations Council from 1989 to 1992. After his term with the Council he joined Swinton and Company where he represented employers, associations and trade unions, until his appointment as a Vice Chair of the Labour Relations Board on August 1, 1995.

KEN SAUNDERS, Vice Chair

Ken Saunders obtained a Bachelor of Arts degree from Simon Fraser University in 1987 and a Bachelor of Laws degree from the University of British Columbia in 1990. Following graduation, he acted as Assistant Director of the Hospitality Industrial Relations Employers' Association where he was responsible for grievance arbitration and Labour Relations Board matters. In 1996 he joined the Community Social Services Employers' Association until his appointment as a Vice Chair in October, 2000. At CSSEA he headed the Dispute Resolution and Research Services Department and acted on behalf of member agencies in Labour Relations Board, Employment Standards, Human Rights and collective agreement arbitration proceedings. On October 11, 2000 Mr. Saunders was appointed a Vice Chair of the Labour Relations Board.

GORD VAN DYCK, *Vice Chair*

Gord Van Dyck was appointed to the Board as Vice Chair on January 1, 1998. Mr. Van Dyck's background is comprised of almost equal measures of public sector, private sector, union and management experience. He was the Director of Labour Relations for the Workers' Compensation Board of B.C. from 1993 to 1998 and the Assistant Business Manager with Local 213 of the International Brotherhood of Electrical Workers responsible for adjudicative services from 1980 to 1993. His earlier experience includes seven years as the General Manager of Bowmac Transport Ltd., a 1992 appointment to the Labour Relations Board and four years as a part-time Commissioner with the Public Service Commission of B.C.

BOARD MEMBERS

CARMELA ALLEVATO, *Employee Representative*

Carmela Allevato is in-house counsel for the Canadian Union of Public Employees. She served as Chief Administrative Officer of the Hospital Employees' Union for six years. She has extensive experience in advocacy and negotiations.

JOANNE ARNOLD, *Employer Representative*

Joanne Arnold has worked in the human resource/ labour relations field for over 20 years, with the majority of those years being spent in the health care industry. Prior to assuming her current position of Senior Vice President with the Health Employers Association of British Columbia, Ms. Arnold worked as the Executive Director of the Continuing Care Employee Relations Association, and held several positions in the human resources field in both the manufacturing and retail industries. Ms. Arnold is also an employer representative on the Board of the Healthcare Labour Adjustment Agency, an organization focused at reducing the impact of down-sizing in health care through the co-operative efforts of both employers and unions.

KEITH BENNETT, *Employer Representative*

Keith Bennett is a graduate of the University of British Columbia. He joined Forest Industrial Relations Limited in 1960 as labour relations assistant and statistician and became assistant manager in March 1969. In 1971 he was appointed manager, then became vice-president in August of 1973, and president in May of 1976, until his retirement in 1997. He was the chief spokesman for the B.C. Coast forest industry in negotiations with IWA Canada. Mr. Bennett is a past chairman of the Labour-Management Committee of the Vancouver Board of Trade, a past member of the Employer-Employee Relations Committee of the Canadian Chamber of Commerce, a past director and former president of the Medical Services Association of B.C. He was a member of the Executive Committee of the Conference Board of Canada, Industrial Relations Section.

MIKE BOCKING, *Employee Representative*

Mike Bocking is the President of Communication, Energy and Paperworkers Local 2000, also known as the Media Union of B.C. Mike has served in a variety of roles in Local 2000 representing about 2,300 workers primarily employed at newspapers and print shops. Before becoming President of Local 2000, Mike was a reporter assignment editor for the Vancouver Sun newspapers.

PAULA BODDIE, *Employer Representative*

Paula Boddie has worked in the human resources/labour relations field for over 15 years. She has held senior management positions in the federal and provincial sectors, most recently as Vice President of Human Resources at B.C. Transit. Ms. Boddie held a similar position at the Vancouver Port Corporation and at the Vancouver Stock Exchange. Ms. Boddie has extensive experience in labour relations, human resources, and with employment equity and human rights matters and legislation. Currently, Ms. Boddie is a practising consultant in the broad human resources field.

DENISE BUCHANAN, *Employer Representative*

Denise Buchanan presently leads the Human Resources department of White Spot Limited as Director of Human Resources. She is involved in labour and employee relations, training, health and safety, and compensation issues for over 3000 employees. Under her leadership, White Spot Limited was awarded the Quality of Council of BC's Award of Distinction of People Practices in 1999. Her experience includes working with union and non-union, corporate and franchisee environments. She has been involved in many rounds of labour negotiations both as chief spokesperson and as a committee member, and has participated in grievances, hearings and arbitrations on a wide spectrum of issues. Her prior experience includes over 10 years in Operations and Multi-Unit Management, providing her with a solid business management background to complement her human resources expertise.

PAULA BUTLER, *Employer Representative*

Paula Butler is presently working as a sole practitioner. Her practice includes mediation/arbitration services, and harassment and other investigation services to both public and private sector clients. She also provides legal advice to employers on a variety of labour and employment law issues, and is the Manager of Labour Relations at MDS Metro Laboratory Services. Prior to that, Paula worked for the Community Society Services Employers' Association of B.C. as the Acting Director/Team Coordinator of Human Resources/Labour Relations Services. Paula is a graduate of the University of Victoria with a Bachelor of Laws.

NEIL BRADBURY, *Employee Representative*

Neil Bradbury is a National Representative for the Canadian Union of Public Employees. Mr. Bradbury has been a member of the Board of Directors of the Medical Services Association since 1985, serving as Vice Chairman since 1989 as well as Chairman in 1993 and 1994. He is a past member of the Workers' Compensation Boards of Review and has held positions on the executives of CUPE Local 498, CUPE's Fraser Valley District Council, and the CUPE B.C. Executive Board. He has instructed courses for the Canadian Labour Congress, the B.C. Federation of Labour and CUPE's six-level program. He regularly represents employees and locals before tribunals.

VERN CARTER, *Employer Representative*

Vern Carter was first appointed as a Board Member in August 1992. He was reappointed in November, 2000. He is President of Interior Forest Labour Relations Association. He is responsible for the Association's overall operations, and acts as chief spokesperson in contract negotiations between Southern Interior forest companies and IWA-Canada. Prior to this role, he was Manager of Labour Relations Services for the Health Labour Relations Association of B.C. He has over 20 years human resources experience in the private and public sectors with extensive experience in labour relations, collective bargaining, mediation and arbitration.

RAJ CHOUHAN, *Employee Representative*

Raj Chouhan was appointed to the position of Board Member in august 1994. He was reappointed in November, 2000. He has many years of diversified experience in labour relations and administration. Since 1986 Mr. Chouhan has been working with the Hospital Employees' Union. He is currently Director of Organizing and Bargaining. He has held various positions including advisor to the Workers' Compensation Board Sub-Committee which was set up to draft health and safety regulations for the agricultural industry, founding member of the B.C. Organization to Fight Racism, and President of the Canadian Farmworkers' Union.

JAYNIE CLARK, *Employee Representative*

Jaynie Clark is an established lay advocate in the labour relation's field. She has been with the BCGEU since 1989 and has worked in the North Peace, Lower Mainland and North Island area offices where she gained broad experience handling and negotiations. Her background includes participating as lay counsel and as a Board member at various administrative tribunals. She is currently the Advocacy Coordinator responsible for the staff who perform legal research and prepare and present at formal arbitration hearings, Labour Relations Board hearings, all levels of court and Workers' Compensation Board appeals. Ms. Clark is in her fourth term as an Employee member of the Labour Relations Board. She is also serving her second term as a Lay Bencher of the Law Society of B.C. and is the Vice-President of the British Columbia Industrial Relations Association. Prior to joining the BCGEU, Ms. Clark worked with the B.C. Federation of Labour.

DAVID COX, *Employer Representative*

David Cox has worked in the field of employee/labour relations in both the private and public sectors over the past 20 years. He held a number of senior positions which have included responsibility for general human resources, strategic planning, safety and labour relations. In the early 1990's he was Director, Corporate Labour Relations and Safety with B.C. Rail Ltd., and was responsible for all corporate labour relations and occupational health and safety initiatives. He is now a private labour relations consultant.

ROGER CROWTHER, *Employee Representative*

Roger Crowther has over 33 years of diversified experience as a Union Representative in British Columbia, for 25 years he worked as a full-time National Union Representative for the Canadian Auto Workers' Union. He is a former Regional Vice-president of CAIMAW. Mr. Crowther is active in a number of progressive community-based groups.

KAREN DEAN, *Employee Representative*

Karen Dean is Co-ordinator of Servicing for the Hospital Employees Union. She has been a full-time representative for the union since 1987 and, prior to assuming her current position, was Director of Education and Health and Safety. Previously Ms. Dean worked as an organizer for

student and tenants rights groups, as a paralegal for the Canadian Farmworkers Union, and as a clerical worker for various unions.

MARIE DECAIRE, *Employee Representative*

Marie Decaire is the Secretary-Treasurer of the Hotel, Restaurant & Culinary Employees and Bartenders Union Local 40, where she has been a member for 20 years and a full-time representative since 1982. Ms. Decaire is an officer of the B.C. Federation of Labour Executive Council and also serves as a Trustee on various health care and pension funds. Ms. Decaire's experience includes grievance arbitration, trade union education and training and contract negotiation.

ANNABELLE P. DONOVAN, *Employer Representative*

Presently Annabelle Donovan is Manager of Human Resources of Western Canada for Signature Vacations. She provides employees relations, organizational development, training, recruitment and compensation and benefit services consultant serving as a Dispute Resolution Officer providing investigation, mediation and complaint administration services. Previously she was Manager of Human Resources for Loomis Courier Service and Manager of Employment Services for B.C. Transit. She was Director of Legal and Legislative Services for Hotel, Restaurant, Culinary Employees and Bartender's Union, Local 40 representing the union in matters before the Labour Relations Board. She developed and delivered workshops concerning management and leadership skills, prevention of workplace harassment and complaint investigation. Annabelle was called to the Bar in 1991.

RALPH ELKE, *Employer Representative*

Ralph Elke is President of R. Elke & Associates and has been involved in labour relations for the past thirty years. Prior to creating his own company, he held senior human resources positions in the mining, transportation and service industries including being responsible for employee relations at Expo 86. He has negotiated over 150 collective agreements in a variety of sectors and has particular expertise regarding the bargaining process as well as in the areas of dispute resolution and collective agreement administration.

ERICH EWERT, *Employee Representative*

Erich was appointed as a Board Member in September 1998. He was reappointed in November, 2000. He has a long history in industrial relations. He was the financial secretary of IWA Canada, Local 1-217 from 1980 to 1998. Prior to this, he was the first Vice-President of the Local Union from 1970 to 1980. Erich has served on both the Regional Council Executive Board and the National Executive Board of IWA Canada, as well as sitting on the Provincial Negotiating Committee. Other activities that Erich has been involved in are: Trustee of the IWA Forest Industry Long Term Disability Plan, Chair of the Lower Mainland Referral and Assessment Service, Director of the Vancouver Children's Foundation, and an advocate in presenting arbitration cases and workers compensation appeals.

CAROL GIBSON, *Employer Representative*

Carol Gibson has worked in the field of employee and labour relations for more than 25 years, both in the public and private sectors, and was the Vice President, Human Resources, West, with Rogers Cablesystems Limited for 12 ½ years. She is now a private labour relations consultant. She holds the B.A. and M.A. in History from the University of British Columbia.

GEOFFREY HOWES, *Employer Representative*

Geoffrey Howes has 35 years of experience in the restaurant and hospitality industry. He has worked in virtually all aspects of the industry, from waiter to chef to owner. As Director of Operations for Toseki Entertainment Ltd. he is responsible for the day-to-day operation of three fine dining restaurants - Salmon House on the Hill, Aqua Riva and Horizons. He also has considerable experience in labour policy issues, as an executive member of the Coalition of B.C. Businesses and as the Vice-President of Government Affairs for the B.C. Restaurant & Food Services Association.

RONALD S. JACKSON, *Employee Representative*

Ron was appointed as a Board Member in September 1998. He was reappointed in November, 2000. He retired February 28, 1998 from District 250 of the International Association of Machinists and Aerospace Workers. A journeyman machinist by trade, at the time of his retirement, he had served for ten years as Directing Business Representative. In addition to leading his union during this period, Ron was a Vice-President of the B.C. and Yukon Territory Building and Construction Trades Council for ten years, served on the Executive Council of the B.C. Federation of Labour and was a Trustee on various union committees, pension, health and welfare and apprenticeship. He was a member of the B.C. Labour Force Development Board.

ERIC JANES, *Employer Representative*

Eric Janes has extensive experience in all aspects of labour relations over the last 20 years and has been the Manager, Labour Relations, at B. C. Hydro from 1987 to 1997. He is currently the Manager of Call Centre Operations in Customer Services for B. C. Hydro. He is also an employer representative on the Joint Advisory Committee to the Collective Agreement Arbitration Bureau, pursuant to Section 83 of the Code.

D. KEVIN KELLY, *Employee Representative*

Kevin Kelly is past President of Kamloops Local 1-417 of the Industrial Wood and Allied Workers Canada. Prior to his election as President in 1983, he was the Financial Secretary for 14 years. Before being elected to a full time position in 1969, he worked in logging, sawmill, plywood and the auto repair business. He is also a Trustee of several forest industry and union benefit plans.

MARK LEFFLER, *Employer Representative*

Mark Leffler is Manager, Human Resources and Labour Relations for the Greater Vancouver Regional District. In that capacity he is responsible for collective bargaining on behalf of 16 municipalities and the Regional District in a voluntary bargaining association. His department negotiates some 60 collective agreements covering more than 13,000 employees, including inside/outside employees, police, firefighters, nurses, museum and public library staff. The department also provides job evaluation, workers' compensation and employment equity services throughout the Region. Mr. Leffler is a graduate of the University of British Columbia and, prior to joining the GVRD in early 1986, held a variety of labour relations and human resource management positions with Ontario Hydro, Liquid Carbonic Canada Ltd. and B. C. Hydro.

R. A. S. (BOB) MARCH, *Employer Representative*

Bob March has been in the personnel labour relations field for over 27 years with Commonwealth Construction. Mr. March's career with Commonwealth began as a Personnel Assistant, through Corporate Safety Officer to Manager of Industrial Relations. He is currently the General Manager of Highways Constructors Ltd. Mr. March is an active participant in the labour relations field. He represents the contractors on numerous boards and committees dealing with a wide variety of issues from labour disputes through to joint apprenticeship training committee functions.

GAIL MARTIN, *Employee Representative*

Gail Martin has worked for B.C. Telephone since 1967. For most of that time she has been involved with the Telecommunications Workers' Union as a Local Executive member. She has served on several joint committees with company representatives including contracting out and technological change, work jurisdiction and job sharing. Since 1995 she has worked full-time for the TWU. She is also active in her community. In 1990 she was a candidate for Councillor in Delta, currently serves on the Delta Police Board, and is an executive member of the Canadian Association of Police Boards. She is married with two adult children.

RON McEACHERN, *Employer Representative*

Ron McEachern is Deputy Commissioner of the Public Service Employee Relations Commission. In this capacity he is responsible for negotiating and administering collective agreements on behalf of the Provincial Government. His branch negotiates numerous master and component collective agreements covering more than 37,000 employees as well as various professional fee for service contracts. Currently he is a member of the Board of Directors for the Health Employers Association of British Columbia. He has been with the Provincial Government since 1975 and has held various labour relations positions including both Manager and Director of Labour Relations for the Commission. Mr. McEachern is a graduate of the University of Victoria and, prior to joining the public service, was employed in industrial relations with MacMillan Bloedel Ltd.

DONALD MONK, *Employer Representative*

Don Monk is a graduate of the University of British Columbia. He has been Vice-President of Labour Relations for Canada Safeway Limited for the past 17 years. Recently he has stepped down as Vice-President and is now on special assignment reporting to the Executive Vice-President of Labour Relations in California, and the President of Canada Safeway Limited.

MIRIAM OLNEY, *Employee Representative*

Miriam Olney is the former Director of Pensions & Benefits for the United Food and Commercial Workers Union. She retired in 1998 after a 35 year career in the labour movement that included 14 years as an Executive Council Member of the B.C. Federation of Labour. She is currently Secretary Treasurer of the B.C. Federation of Retired Union Members. Miriam is the former Chair and Director of the Insurance Corporation of B.C., and also served as a Director with the National Institute of Disability Management and Research.

WAYNE PALMER, *Employee Representative*

Wayne Palmer was working as a heavy equipment operator on highways in the Yukon Territory when he became President of the Yukon Local of the Public Service Alliance of Canada. He became a representative of the Teamsters Union in 1974 and was elected President of Teamsters Local 213 in 1981. Mr. Palmer retired in 1997. He was appointed to the Board in 1999.

CHARLIE PECK, *Employee Representative*

Charlie Peck is the Business Manager of the International Brotherhood of Electrical Workers, Local 213, and has been a member of the union since beginning work as an electrician apprentice in 1957. Charlie has served in a number of roles in his union, including Hiring Hall Dispatcher and Secretary-Treasurer. In addition to his duties as Local 213's Business Manager, he is currently Chair of the Provincial Council of Electrical Workers, President of the B.C. and Yukon Territories Building and Construction Trades Council, a Director of Concern Properties and a Vice-President of the B.C. Federation of Labour.

DORIS PENNER, *Employer Representative*

Doris Penner has been a residential building contractor for over 18 years, owning her own company, Quiniscoe Homes Ltd. at Panorama, B.C. She is the immediate Past President of the Canadian Home Builders Association of B.C. and currently serves on the Board of the National Homebuilders Association. Doris currently serves on numerous boards and committees involved with maintaining the health of the residential construction industry. In the past she has served on the executive of both the Yukon and Whitehorse Chambers of Commerce, was the founding President of the Women's Business Network of Yukon, sat as a Director of the Yukon Energy Corporation and Yukon Development Corporation as well as different steering committees having to do with employment in the Yukon. Doris has her real estate sales license,

is a residential housing professional, holds a commercial pilot's license and is an aircraft maintenance engineer.

KAREN ROCKWELL, *Employee Representative*

Karen Rockwell is currently Vice-President of the Office and Professional Employees' International Union Local 378. Karen sits on the Canadian National Committee of her International union, is Chair of the Local's Education Committee and sits on the Local's Arbitration Review Panel. She has been a member of the Union's Collective Bargaining team since 1990. Karen has been employed with the Insurance Corporation of British Columbia since 1987 and works as a litigation adjuster at the ICBC office in Coquitlam.

KATHY SANDERSON, *Employer Representative*

Kathy Sanderson previously served the small business community of B.C. as the Chair of the Coalition of B.C. Businesses and as Director of Provincial Affairs for the Canadian Federation of Independent Business. Currently, Ms. Sanderson works as a consultant and in addition to serving on the Labour Relations Board also sits as a member of the B.C. Labour Force Development Board.

FRANZ SCHERUBL, *Employer Representative*

Franz Scherubl has worked in the labour relations field for close to 20 years. He is currently responsible for labour relations, human resources corporate governance and trade training at BC Gas Utility. He has a Bachelor of Commerce and Business Administration degree from the University of British Columbia and has also worked in mining, insurance and retail services.

RON SCHMIDT, *Employee Representative*

Ron Schmidt is Assistant to the Director of District 3 of the United Steelworkers of America, which encompasses the four western provinces and both Territories. He became active in his union in the early '70s as a Shop Steward and by 1975 was serving as Grievance Chairperson and Vice-President of this 2600-member Local in Trail, B.C. During 1975/76 he served as an organizer and in 1977 was appointed to the position of Staff Representative. In 1989 he became Area Supervisor of the Kootenays and B.C. interior. In June 1995 he was appointed to his current position. He has many years of experience in arbitration, negotiations and organizing and has held executive positions on labour councils and the B.C. Federation of Labour.

MAUREEN SHAW, *Employee Representative*

Maureen Shaw has been President of the College Institute Educators' Association of B.C. (CIEA) for 3 years and Secretary Treasurer for the previous 3. She has also been a member of the Executive Council of the B.C. Federation of Labour and the BCFL Education Committee. An English instructor at Kwantlen University-College, Maureen has also been active at the local level, serving as Chief Steward, Chief Bargainer and Local President.

MARCIA SMITH, *Employer Representative*

Marcia Smith is the Managing Partner of the Vancouver office of National Public Relations, Canada's largest full-service public relations company. With over 17 years of experience, she covers a wide range of industry sectors and issues, including international trade, forestry, technology, health, labour and employee relations, aboriginal issues and tourism.

COLIN SNELL, *Employee Representative*

Colin Snell is the former President and Secretary Treasurer of the British Columbia Provincial Council of Carpenters. Prior to his election in 1985 to the Provincial Council, he was Business Agent of Carpenters' Vancouver Local Union 452 for 15 years. Mr. Snell has held Executive Council positions with the B.C. Federation of Labour, the B.C. and Yukon Territory Building and Construction Trades Council and the Vancouver and District Labour Council.

DAVID VIPOND, *Employee Representative*

David Vipond has been employed with the BCGEU for 21 years. He has worked in the Kootenays, Okanagan and Lower Mainland Area Offices as a Regional Coordinator. He is currently Chief Negotiator for the Master Agreement with the Province of British Columbia. He is also responsible for membership grievance appeals and is a Trustee for the Public Service Pension Plan. He was a National Industrial Officer in Australia with the Community and Public Sector Union where he was responsible for the federal Attorney General's Department, including all related agencies, boards, commissions and courts. He has previously served as Chair of the Board for Surrey Memorial Hospital and as a member of the Business Task Force

JOHN WEIR, *Employee Representative*

John Weir is the Assistant to the Secretary-Treasurer and Director of Organizing for the B.C. Federation of Labour. From 1972 to 1980, he was a member of Local 480 of the United Steelworkers of America in Trail, B.C., serving as Chief Shop Steward and Safety Committee Vice-Chair. He represented Trail and Kimberley Steelworkers in several rounds of contract negotiations and was Secretary of the Cominco Chain Bargaining Council in Western Canada. As Financial Secretary of Local 480 from 1980 to 1986, he was responsible for Workers' Compensation advocacy, rehabilitation, benefits and pensions. During this period, he served as labour member of the Unemployment Insurance Board of Referees. In 1986, John was appointed to the Workers' Compensation Review Board. He joined the B.C. Federation of Labour in 1987 as a Staff Director and has worked on a range of labour relations issues including human rights, occupational health and safety and Workers' Compensation. In 1991, John Weir was seconded to the Canadian Labour Congress to coordinate projects in South Africa and the Middle East, returning to the Federation a year later.

DUNCAN WILKINS, *Employer Representative*

Duncan Wilkins has worked in the employee/labour relations field for over 20 years. He had extensive experience in the mining and metals industry with Cominco Ltd., prior to a four year term at the Business Council of B.C., following which he has carried on a consulting practice in the areas of labour relations, human resources and general management.

GARRY WORTH, *Employee Representative*

Garry Worth is the former President of the Pulp, Paper and Woodworkers of Canada (PPWC). He has been active in the PPWC and the Confederation of Canadian Unions since 1979. He became active in PPWC Local 10 in Kamloops, in the mid-1970's in various executive positions including President for six years. He has been involved in several sets of pulp industry bargaining as wage caucus chair and conference spokesman. Mr. Worth has also coordinated the certification and negotiation of first collective agreements for workers in the service industry. He has also conducted union education and training seminars for union stewards.

MEDIATORS

In 2001, the Board's Mediation Division consisted of the following Mediators:

MARK ATKINSON, *Mediator*

Mark Atkinson has been involved with labour relations since 1981. He is a former Staff Representative and Director with the Hospital Employees' Union. His duties included education, negotiations, arbitration, general collective agreement administration and the co-ordination of essential services. Mark joined the Board as a Mediator in 1995.

MARK J. BROWN, *Mediator and Vice-Chair*

In addition to his position as a Vice-Chair, Mark Brown served as a Mediator for most of the year.

DEBBIE CAMERON, *Mediator*

Debbie Cameron graduated from the Cariboo College Nursing program in 1976 and worked as a registered nurse for the next four years. In 1981 she was employed by the B.C. Nurses' Union, initially as a Labour Relations Officer, then as Negotiations Officer and in 1992 became the Co-ordinator of Hospitals and Organizing. As Hospitals Co-ordinator she was responsible for negotiations and contract administration of all hospital sector collective agreements, covering more than 17,000 employees. Debbie joined the Board as a mediator in 1994.

JIM KELLY, *Mediator*

Jim Kelly joined the Board in early 1992 following a long career in the union movement. After 13 years with Ford Motor Company, Mr. Kelly resigned his position at Ford and as Vice President of Local 707 United Automobile Workers and assumed a position with the Canadian Union of Public Employees as a National Representative, working for 15 years out of the Kelowna office. He has served on numerous arbitration boards and was responsible for administering a variety of collective agreements. Prior to joining the Board in 1992, Jim worked as a private mediator.

GRANT McARTHUR, *Mediator*

Grant McArthur graduated from the University of British Columbia in 1973. He worked for the Hospital Employees' Union for approximately five years. He then joined the Labour Relations Board as a Special Investigating Officer in 1980 and left to work for Canada Post in late 1984. Mr. McArthur joined B.C. Rail in 1986 where he worked in labour relations and as Manager of Personnel Services for three years prior to returning to the Board in 1992.

STEPHEN RINFRET, *Mediator*

Stephen Rinfret has worked in both labour relations and human resources in B.C. for over 20 years. Immediately prior to joining the Board, he was Director of Labour Relations Services for the Continuing Care Employee Relations Association (now HEABC). During this time, Mr. Rinfret also taught an undergraduate course in collective bargaining at Simon Fraser University, and a similar course at the British Columbia Institute of Technology. He holds a Bachelor of Science degree from the University of Montreal (Loyola College) and a Masters degree in Business Administration from Simon Fraser University. Stephen has been with the Board as a mediator since 1994.

BARBARA SHARP, *Mediator*

Barbara Sharp has been involved in labour relations since 1974. A former business agent for both the Workers' Compensation Board Employees' Union and the Office and Technical Employees' Union, Local 378, she assumed a wide variety of responsibilities including organizing, education, negotiations, job evaluation, and general collective agreement administration. She has been an instructor for the Canadian Labour Congress, member of the B.C. Federation of Labour Political Action Committee and the New Westminster Labour Council. She has chaired various union committees such as education, women's rights, and acted as representative in grievance arbitration.. Barbara is currently on leave from the Board for a three-year term of office as Mayor of the City of North Vancouver.

III. HIGHLIGHTS OF BOARD DECISIONS

In 2001 the Adjudication Division published 481 numbered decisions. The following are summaries of some of the more noteworthy decisions issued during the year. These summaries are provided for general information only and should not be viewed as a ruling by the Board or an official interpretation of the *Labour Relations Code*. The full text of these and other Board decisions are available at the Board's Library, its website (www.lrb.bc.ca), or can be obtained from Western Legal Publications (toll free hot line 1-800-663-0422 or Vancouver (604) 687-5671).

ACQUISITION AND TERMINATION OF BARGAINING RIGHTS

Definition of Employee

Lake City Casinos Limited, BCLRB No. B374/2001 – Leave for reconsideration denied in BCLRB No. B466/2001 – The BCGEU applied under Section 18 for certification of a bargaining unit consisting of surveillance employees employed by the Employer at its Kelowna and Vernon casinos. In the alternative, the Union requested that consideration be given to including the surveillance employees in the unit for which it is already certified, the "front line" unit, at all of the Employer's four casinos. The Employer objected to the application on the basis that the surveillance operators were not employees under the Code and if they were, the bargaining unit was not appropriate.

The Panel found that conflict would arise if surveillance operators were in the same bargaining unit as front line employees. The surveillance operators were responsible, virtually 100% of their time, for monitoring and reporting employee infractions, related activities, casino activity, and suspicious conduct amongst employees and patrons. The Panel also found that adherence to the Employer's monitoring and reporting policies created the need for an undivided loyalty to the Employer. Including surveillance operators in a second unit would not address the concern. *Held:* Union's application dismissed. The surveillance operators were excluded from the definition of "employee" under the Code.

Employee in the Unit

K Forms Foundations Ltd., BCLRB No. B9/2001 – The Provincial Council of Carpenters applied under Section 21 for its standard craft bargaining unit. The Union asserted that as of the date of the application the proposed unit consisted of five journeymen carpenters. The Employer argued that eight other employees were performing some carpentry work on the date of the application, and should be included in the unit.

On the date of the application the eight employees were being paid the Labourer/Helper wage rate under the *Fair Wage Act*. The day before the application an Employment Standards Officer visited the Employer's worksite. He found that the Employer was contravening the Act by employing individuals who were not

registered as apprentices or did not hold credentials. The Employer was ordered to cease employing the individuals until the Act's requirements were met. The Employer immediately complied with the order and registered the employees as apprentices.

The Panel held that the Act does not narrow the Board's policy as to which employees should be held to be working within a craft bargaining unit at the time of a certification application. Unlike some legislation, there was no provision in the Act that expressly overrides or qualifies provisions of the Code. Moreover, to exclude the eight employees from a bargaining unit they would otherwise be included in by Board policy would not forward the purpose of the Act. Further, it was not sound labour relations policy to carve out employees who would otherwise be in a proposed bargaining unit to determine threshold support and then issue a certification that would immediately sweep them into the unit. The Board's normal jurisprudence applied. The eight employees fell within the proposed unit and as such must be counted for the purposes of assessing membership support. *Held:* Union's application dismissed.

Flavelle Sawmill Company Limited, BCLRB No. B284/2001 – IWA applied under Section 141 for reconsideration of BCLRB No. B447/2000 wherein the original panel dismissed the Union's argument that 74 employees had a sufficient continuing interest in the bargaining unit to warrant their participation in a final offer vote. The Union's argument before the original panel was based on an outstanding grievance that sought to restore the employees' recall rights. The grievance was dismissed prior to the Original Decision being rendered and the original panel sought submissions from the parties about the impact of that decision.

On reconsideration the Union argued that the original panel should not have relied on the subsequent dismissal of the grievance by the arbitrator, particularly since the award was subject to a Section 99 appeal and may yet be overturned by another dispute resolution mechanism in the collective agreement. The Union argued the mere existence of a *bona fide* grievance establishes the right of the individuals to have their ballots counted.

The Reconsideration Panel agreed that if a grievance is *bona fide* a union is not obliged to prove the employees had "enough of an interest" to warrant participation in the vote. Even if employees are not going to be recalled to active employment, they would nonetheless have an interest in negotiating protection of their rights through severance pay, retraining allowances, job counselling, etc. However, the circumstances of this case were unusual. The original panel correctly relied upon the arbitration award in finding that the employees did not have recall rights. Ordinarily the determination of sufficient continuing interest on the basis of an outstanding grievance depends on the *bona fides* of the grievance and not its ultimate determination. However, were it not for the need for expedience and finality in labour disputes, it would be preferable to await the resolution of such a grievance before determining eligibility.

It would be contrary to the purposes of the Code and practical labour relations sense for the Board to ignore the award on the basis that it is subject to appeal. An appeal of an arbitration award is too

remote to satisfy the sufficient continuing interest test. A decision is final and binding on the parties unless and until it is stayed or reversed by a subsequent decision. *Held:* The Union's application for leave for reconsideration was denied.

Dependent Contractor

Weldwood of Canada Limited, BCLRB No. B387/2001 – Application for leave for reconsideration pending – IWA Local 1-424 applied for a variance of its certification with Weldwood to include owner/operator log haulers who operated as subcontractors of various Logging Contractors hauling timber to the Weldwood mill in Quesnel. Weldwood and the Logging Contractors argued that the Log Haulers lacked a sufficient relationship with Weldwood to be considered dependent contractors vis-à-vis Weldwood.

The Panel accepted that a dependent contractor relationship did not require an express contractual relationship between the log haulers and the licensee (in this case, Weldwood). However, it held there must nonetheless be a relationship between the two. Mere economic dependence does not suffice. The word "contractor" in the phrase "dependent contractor" must have real meaning. Where the log hauler is under contract to a logging contractor, the relationship between the log hauler and the logging contractor must be a "pass-through" relationship reaching back to the licensee. The log hauler must more closely resemble an employee of the licensee, than an independent entrepreneur in an arm's length relationship with the licensee.

After a detailed review of the evidence, the Panel found that the circumstances of the case before it were substantially distinguishable from the Board's earlier cases regarding log haulers. Applying the factors enumerated in *West Fraser Mills*, the Panel concluded the Log Haulers' relationship was primarily with and dominated by the Logging Contractors. There was no clear pass-through relationship to Weldwood except as the source of most of the work and some overarching statutory responsibilities. The Panel concluded the Log Haulers did not resemble employees of Weldwood more than they resembled independent contractors. If they resembled employees at all, they more closely resembled employees of the Logging Contractors than Weldwood. *Held:* Union's variance application dismissed.

Certification – Appropriate Bargaining Unit

Can-Am Produce & Trading Ltd., BCLRB No. B15/2001 – The Employer applied for reconsideration of a decision granting RWU, Local 580 a certification for a unit of truck drivers: BCLRB No. B60/2000. The Employer asserted that the original panel had erred in its analysis of functional integration by focusing on "core duties," and had further erred by excluding three employees from the proposed unit as an alternative finding.

The Reconsideration Panel agreed that consideration of functional integration is not limited to core or primary duties. Shared job duties may demonstrate significant functional integration irrespective of whether the shared duties are "core" or "primary". While a number of panels have used those descriptive terms in past decisions, they did so in keeping with the general principles set out in *IML* and *Lifestyle Retirement Communities Ltd.*, BCLRB No. 452/97. Given the contextual

nature of any assessment of functional integration, no formulaic approach to analyzing functional integration should be adopted; the Board's policy must remain flexible. Where job duties are shared, a panel must assess the evidence to determine whether the nature, type and extent of the functional integration is such that a viable collective bargaining relationship cannot be established. This analysis will be fact-driven, involving application of the *IML* and *Lifestyle Retirement Communities Ltd.* principles to the particular case.

While the original panel stated that the shared cleaning duties were not core duties, reviewing that panel's statements as whole, the reconsideration panel was satisfied that the panel had in fact analyzed the nature, type and extent of the shared cleaning duties and had concluded that the time spent cleaning by drivers was "not significant". Similarly, the original panel had properly considered the amount of time spent driving by three non-drivers.

The Reconsideration Panel noted that *Lifestyle* does not stand for the proposition that the Board will include or exclude employees straddling a proposed bargaining unit to finesse the effect of functional integration in order to render an otherwise inappropriate bargaining unit appropriate. However, once a panel has determined that a bargaining unit is appropriate, it may exclude or include straddling employees in order to ensure that collective bargaining or ongoing collective agreement administration remains viable. Alternatively, the panel can leave such matters to the collective bargaining process; if the parties reach an impasse in bargaining, either party may apply to have the issue adjudicated under Section 139. *Held*: Employer's application for leave granted; Employer's application for reconsideration dismissed.

Island Publishers Ltd., BCLRB No. B98/2001 – The Graphic Communications International Union, Local 525 applied for certification of a unit of employees except office and sales staff at a newspaper operation. The Employer argued that the proposed unit cut across a group of functionally integrated employees and was therefore inappropriate for collective bargaining.

The proposed unit included Creative Consultants but not Sales Representatives. Both were part of the Sales Department. Each Sales Representative worked with a Creative Consultant about 25% of their time creating display ads. The design of each display ad was created through a process of consultation and consensus between the Sales Representative and the Creative Consultant.

The Panel upheld the Employer's objection. Generally, Sales Representatives did not operate the computer programs used to make ads; this was done by the Creative Consultants. However, the information typed into the computer and its organization were the product of a joint effort by the Creative Consultant and the Sales Representative. They worked together as a team to create what is inputted. That interaction reflected an integrated work process as contemplated in *IML*. *Held:* Union's application for certification dismissed.

Fleetwood Sausage, a Division of Consolidated Food Brands Inc., BCLRB No. B104/2001 – Fleetwood applied for reconsideration of BCLRB No. B364/2000,

where the original panel granted IBEW Local 213's application for certification of a bargaining unit consisting of the employees in Fleetwood's maintenance department. This was an initial certification of a bargaining unit of 13 employees who worked in a single physically integrated plant of approximately 227 employees. Fleetwood argued that the bargaining unit was inappropriate for a number of reasons, relying in particular on statements in *IML* that the Board would not certify a single classification and would not certify a craft unit in an industrial setting. Fleetwood also submitted that certifying the unit applied for would significantly curtail the ability of the other employees in the plant to choose their bargaining agent, should they decide to seek trade union representation. Fleetwood conceded that there was insufficient functional integration between the maintenance employees and the production employees to deny the certification on that basis alone. However, it asserted that, in allowing the certification, the original panel focused on this third *IML* factor to the exclusion of the first, second and fourth factors. The Reconsideration Panel rejected this assertion, and concurred with the original panel's reasoning with respect to the other issues raised. The Reconsideration Panel took the opportunity to clarify a number of the statements in *IML* on which Fleetwood had relied. In so doing, the Reconsideration Panel cautioned against relying on isolated words when they must be read in the context of the decision as a whole. *Held:* Employer's application for reconsideration dismissed.

Sears Canada Inc., BCLRB No. B236/2001 – The Employer and Certain Employees applied for reconsideration of the original panel's decision to grant certification to IBEW, Local 213 for a unit of on-site and shop Service Technicians and Service Technician Helpers: BCLRB No. 241/2000. The Reconsideration Panel gave reasons for its "bottom line" decision dismissing the reconsideration applications.

The Employer and Certain Employees argued that the original panel certified a craft unit in an industrial setting, contrary to *IML*. The Reconsideration Panel rejected this argument. First, "service technicians" were not a craft. The Board has never recognized service technicians as a craft, and it was never intended that the craft unit provisions of the Code should be used as a vehicle for discovering new crafts. Second, the Union was not a "union pertaining to the craft or skills" of the service technicians. Finally, the rationale for the principle that the Board will not certify a craft unit in an industrial setting is to prevent a proliferation of craft units, with the attendant risk to industrial stability. On the facts of this case, there was no potential for a proliferation of craft units. Indeed, there was no reason why the Union could not represent the remainder of employees at the site if they wished union representation. The Board in *IML* did not intend to deny access to collective bargaining in a situation where no rationale for doing so was presented. Such an interpretation would be entirely inconsistent with the policies set out earlier in the *IML* decision. *Held:* Applications for reconsideration dismissed.

Certification – Build-Up Principle

P. Sun's Enterprises (Vancouver) Ltd. (Clarion Hotel Grand Pacific) BCLRB No. B169/2001 – The Employer applied under Section 141 for reconsideration of

BCLRB No. B432/2000 wherein the original panel allowed the CAW's application for certification. Among other things, the Employer alleged the original panel incorrectly applied the build-up principle.

The Employer argued that as long as a build-up is found to be "certain", the build-up should also be considered "imminent". The Employer also argued that the original panel erred when it found that "imminence" is influenced by the relative size of the build-up. The Reconsideration Panel disagreed. The build-up must be not only certain, but also must occur within a "relatively short period of time". The imminence of the build-up is determined on the specific facts of each case. In the more difficult cases it may well be appropriate to consider factors such as the ratio of current employees to perspective employees.

The Employer also argued that Sears Canada, No. B500/98 set out a rule requiring the Board to "err on the side" of the rights of the future employees when the present employee complement is on the margin of the 50% threshold. The Reconsideration Panel found that while the 50% rule is one of the most critical factors influencing the application of the build-up principle, it is not an absolute rule. The Panel was not prepared to second-guess the original panel's judgment call to err on the side of the present employee complement.

Finally, the original panel was entitled to discount the Employer's projection of an expanded work force of 207 employees. However, the Panel remitted the matter back to the original panel to provide a detailed analysis as to how it reached its conclusion that a more accurate employee forecast would be around 150 instead of 207 employees. *Held*: Application for reconsideration allowed in part. Remitted to original panel for analysis.

Vote

Mainstream Association for Proactive Community Living, BCLRB No. B5/2001 – The original decision (BCLRB No. B416/2000) dismissed the Employer's application for a second representation vote on a variance application by BCGEU under Section 24(4) of the Code. This provision gives the Board a discretion to order another representation vote if less than 55 percent of eligible employees cast ballots. In this case, a total of 72 employees out of 258 eligible voters cast ballots. The original panel found the Board would not exercise its discretion to order a new vote merely because there has been a low turnout, a conclusion with which the reconsideration panel agreed. The original panel further found that the Employer had not established that the low turnout was because a significant number of employees were unaware of the vote, and therefore the vote did not disclose the true wishes of the majority of employees. However, the Reconsideration Panel found that the original panel did not consider the returning officer's report, which indicated that a significant number of employees were unaware of the vote. On further investigation, the Reconsideration Panel concluded that the scheduling and notice of the vote fell considerably short of satisfying the Board's obligation, set out in Regulation 8(2)(a), to ensure that "every person eligible to vote has a reasonable opportunity to do so". In these circumstances, the Reconsideration Panel found that the results of the vote had to be disregarded, and a new vote directed under Section 24(2). *Held*: Employer's appli-

cation for reconsideration granted; new vote ordered.

Rogers Video Division of Rogers Cablesystems Limited, BCLRB No. B191/2001 – The IBEW, Local 213 applied under Section 142 to expand its bargaining unit to include employees at another location. Following the certification hearing and a vote of employees, the Employer applied to add three names to the voter list. The Employer asserted that its error in failing to raise the three individuals earlier in the process could not abrogate the Board's statutory responsibility to ensure a certification is not issued unless 55% of the employees are members in good standing.

The Panel held the Employer had waived its right to object. The Employer conceded that it was aware of the three individuals at the time of the certification hearing and the vote, and had not provided a reasonable explanation for not raising its objection at that time. The Employer, through legal counsel, clearly indicated at the certification hearing that it had no objections to the voter list as compiled. Further, it urged the representation vote proceed on the basis of the list of employees. In the circumstances, the Panel found the Employer made an informed, clear and unequivocal waiver of any objections concerning the constituency of the bargaining unit. Due to the expedited nature of the Board's certification process, the Board has held that objections made in the context of certification and decertification applications must be raised by the parties when they are aware of the facts giving rise to them. *Held*: Employer's application to have the three individuals included on the voters list dismissed; the certification was granted.

Membership Support – Legislative Change

Campbell River Fibre Ltd., BCLRB No. B356/2001 – The CEP, Local 1123 applied for certification under Section 18 on August 10, 2001. It had sufficient support for "automatic certification" (certification without a vote) under then-Section 23 of the Code. Sections 23 and 24 were repealed by statutory amendment on August 16, 2001, and a new Section 24 was substituted. At the certification hearing on August 17, 2001, the Employer objected to the Board granting certification without a vote, taking the position that the requirement for a mandatory certification vote, found in the new Section 24, should apply to the Union's application. A vote was conducted and sealed.

The issue was whether the old or the new statutory language governed the Union's application. There was no transitional language in the amending legislation dealing with certification applications before the Board. The parties agreed that in those circumstances the *Interpretation Act* applies. They disagreed, however, over which provision of that *Act* was applicable: Section 35 (repeal) or Section 36 (repeal and replacement). The Union argued automatic certification was a vested or accrued right unaffected by repeal, while the Employer argued it was a purely procedural matter and therefore subject to the legislative change in procedure governing applications for certification. After analyzing the relevant jurisprudence, the Panel agreed with the Employer. It found the Union's substantive right was to apply for certification. Whether the requisite level of support was confirmed by way of membership card evidence or certification vote was a purely procedural matter. Accordingly, under s.

36 of the *Interpretation Act*, the Union's application for certification should be processed under the procedural rules of the new enactment as far as possible. *Held*: The vote conducted on August 20, 2001 ordered to be counted.

Mac's Convenience Stores Inc., BCLRB No. B422/2001 – UFCW applied for certification of a unit of employees of Mac's. 610049 BC Ltd. argued that it was the employer of the employees in question. The Union declined to accept certification of the numbered company and brought a common employer application for the two companies. Before the applications could be determined, the Code was amended to require representation votes in all certification applications. This decision addressed whether a vote was therefore required.

The Panel disagreed with the Union's argument that it had an accrued or accruing right to certification in respect of the numbered company. The amended legislation did not raise a question of accrued or accruing rights, nor did it affect the right of a union to become certified. The amendment only affected the procedural matter of what evidence the Board may rely on when determining whether a union has requisite membership support.

The determination of procedural and evidentiary issues must be made in accordance with the amended legislation when the amendment predates the Board's decision to certify in a given certification application. The fact that parties did not disagree about certain issues did not mean the Board had conclusively determined those issues. If the Board remained silent on those undisputed issues then, by necessary implication, they are determined only if and when the certification order is issued. In this case the issue of majority support had not been determined by the Board and must be determined in accordance with the amended Code which requires a vote. *Held:* Vote ordered.

Inclusion/Exclusion

Tourism British Columbia, BCLRB No. B299/2001 – BCGEU applied pursuant to Section 139 of the Code for a declaration that 14 Certain Employees were "employees" of Tourism British Columbia (TBC) and included in its bargaining unit. TBC raised a preliminary objection that the Union's application should be treated as a variance application and dismissed because the Union did not enjoy the support of any of the Certain Employees. 13 of the 14 Certain Employees' positions had historically been excluded from the bargaining unit, which was certified in 1974. The 14th was a new position.

TBC became a Crown Corporation in 1997 with the passage of the *Tourism British Columbia Act*, which provided that the *Public Service Labour Relations Act* no longer applied to TBC or its employees. Five of the Certain Employees were Trade Development Officers, who were initially included in the bargaining unit but were excluded in 1985 by amendment to the *PSLRA*.

The Panel upheld TBC's objection with respect to the 13 Certain Employees whose positions had historically been excluded from the unit. Concerning the historically excluded positions other than Trade Development Officers, the only evidence led by the Union that its initial certification encompassed those positions was the fact that the certification was broadly worded.

Such evidence did not suffice for this purpose. With respect to the Trade Development Officers, the Panel held that the rationale in *Automatic Electric* applied to positions historically excluded from the bargaining unit by statute, as well as positions historically excluded by agreement: over time, the excluded employees develop a distinct community of interest. Accordingly, if the Union wished to represent the Trade Development Officers, it was required to organize them.

TBC's objection was dismissed with respect to the remaining employee. His position was only recently added as a temporary position, and the Union had reserved the right to challenge it if it became permanent. *Held:* TBC's preliminary objection upheld with respect to 13 of 14 Certain Employees.

Collective Agreement

International Union of Operating Engineers, Local No. 882, BCLRB No. B302/2001 – Application for reconsideration pending – Local 882 in its capacity as an employer applied under Section 139 of the Code for a declaration that it was not bound by, and had not entered into, a collective agreement with I.W.A.-Canada, Local 1-3567. It argued that its Business Manager, Bowering, had neither actual nor apparent authority to enter into a collective agreement with the IWA.

The IWA had applied for certification of a unit effectively comprised of the Business Representatives of Local 882. Its application coincided with an election campaign for the Executive of Local 882. The certification hearing was held September 19, 2000, and the collective agreement was negotiated and concluded the same day between Bowering and the IWA President, Ghag. At the time, Bowering was the incumbent Business Manager of Local 882, and Anker was the incumbent President and the Business Manager-elect. Anker did not discover the collective agreement negotiated between Bowering and Ghag until after he replaced Bowering as Business Manager on September 22, 2000.

At the certification hearing, Bowering appeared for Local 882 and Ghag appeared for the IWA. Anker also attended the certification hearing along with an IUOE International representative, Kadey, who advised that he appeared on behalf of the International. Kadey requested an adjournment. In his submissions in support of that request, he asked rhetorically what was to stop the old administration of Local 882 from saddling the new administration with a collective agreement it could not live with. Anker made no comment on this submission. Neither Anker nor Kadey told Ghag that Bowering did not have authority to negotiate a collective agreement.

The Panel found that Bowering as Business Manager did not have actual authority to conclude a collective agreement on behalf of Local 882. However, the Panel concluded that Bowering did have apparent authority. Although the Board's rules on apparent authority are modeled on the common law of agency, there are special considerations that arise in the labour relations context. A party is entitled to rely on impressions conveyed and received about the authority of the other person sitting across the bargaining table. To hold otherwise would undermine the finality of collective

agreements. The Panel found that there was no reason for Ghag to doubt Bowering's authority to negotiate a collective agreement on behalf of Local 882. Kadey's statements at the certification hearing could reasonably have led Ghag to think that he could conclude a collective agreement with Bowering and moreover, that he should do so quickly. *Held:* Local 882's application dismissed; declaration that Local 882 bound by collective agreement granted.

Employer Domination of Trade Union

Judy Hollingsworth, BCLRB No. B13/2001 – Hollingsworth was employed by the Teamsters Local 213 Members Benefit Plan (the "Employer"). She filed an application seeking a number of orders and declarations arising out of her employment. Under Section 31 she sought a declaration that Teamsters Local No. 213 was an employer-dominated organization and that the Employer interfered with the administration of the Union under Section 6(1). Under Section 5 she claimed that disciplinary action was threatened against her for exercising her right under the Code to file a complaint.

The Panel determined the Union was "influenced" by the Employer within the meaning of Section 31. All of the positions on the Employer's board were appointed by the Union. The Secretary Treasurer for the Union was the chair of the Joint Board governing the affairs of the Employer. The Administrator of the Employer reported to the Joint Board. The Union business representatives who acted on behalf of employees of the Employer reported either to the Secretary Treasurer or the President of the Union. The potential dangers inherent in the close relationship between the Union and the Employer made the Union ineligible for the status of trade union but only to the extent that it represented employees of the Employer.

The Panel also found that the Employer breached Section 5(1)(b). It was clear that the Employer viewed the filing of Hollingsworth's complaint under the Code as "another act of misconduct" because in its view the merits were frivolous or vexatious, and it threatened to discipline her. If the Employer was of this view the proper approach would be to apply under Section 133(4) for the Board to dismiss the complaint as being without merit rather than invoking the potential for discipline. Although the Employer later rescinded the threat it really only postponed it pending the outcome of her complaint. There remained a threat of adverse consequences dependant on the outcome of her complaint. *Held:* Complainant's application granted in part.

Decertification – General

Carmac Diesel Ltd., BCLRB No. B319/2001 – The Union applied pursuant to Section 33(11) to cancel its certification. The Union argued that the certificate was inappropriate due to its limited scope and that the Union was unable to assist its membership in the unit. The Panel confirmed the Board has discretion to cancel a certification on the basis of a union's express renunciation of its bargaining rights. The Board will take into account whether the union's actions constitute a breach of its duty to bargain in good faith, its duty of fair representation, or any other provision or policy of the Code. These questions are considered in the context of the circumstances of each particular case. The existence of a collective agreement *per se* does not

preclude an application to abandon a certification: *Cimco*, BCLRB No. B250/95.

In this case the employees in the unit did not allege the Union had breached any provision or policy of the Code and the Employer did not allege the Union had bargained in bad faith by seeking to abandon its certification or otherwise. *Held:* Union's application granted. Certification cancelled.

Cancellation of Certification

R. C. Purdy Chocolates Ltd. [Certain Employees of], BCLRB No. B412/2001 – Leave for reconsideration denied in part in BCLRB No. B477/2001, remainder of application for reconsideration pending – This decision provided the reasons for an earlier "bottom-line" decision in which the Panel ordered the CEP Local 2000's certification cancelled and declared a strike then ongoing to be unlawful. The decision arose from an allegation made by the Employer and nine Certain Employees that four membership cards the Union had relied upon when it applied for certification in 1997 were forged.

The Union was certified in 1997 under Section 23 of the Code (by "automatic certification" based on membership card evidence). Board records revealed that, had the four cards not been counted as valid membership evidence, the Union would not have been granted an automatic certification. After the Union was certified, it won a decertification vote, obtained a pre-strike vote, and negotiated a first collective agreement which was ratified by the bargaining unit members. It obtained a second pre-strike vote in April of 2001, and began a strike and picketing on April 30. The strike was ongoing at the time of the hearing in October.

In August 2001 the Employer came into possession of information which led it to believe that membership cards had been forged in 1997. It applied to the Board to have the Union's certification cancelled. At the end of the Employer's case, the Union conceded that the signatures on the four cards had been forged, but the Union's only witness testified that he had not been able to discover by whom.

The Panel noted that this was the first time since the Code was enacted in 1973 that a certification had been shown to have been obtained with forged cards. It further noted the importance the Board attaches to the integrity of membership cards. It found that, in the circumstances, if the Union's certification were not cancelled, the integrity of the card-based system would be called into serious question.

The Panel was mindful of the negative impact that its decision to cancel the certification would have on the employees, noting that there was no proof or even allegation that any of the employees were involved in the forgery of the four cards. Had the Panel not been able to permit them to immediately seek union representation if they wished it, by not imposing a time bar on certification applications, the Panel might well have declined to cancel the certification. As it was, even if the Panel had the authority to impose a time bar in these circumstances (which it doubted), the Panel was not persuaded that it was appropriate to do so here. Imposing a time bar here would merely punish the employees for the wrongdoing of others.

The Panel rejected a request from the applicants for damages and costs, finding

that it did not have jurisdiction to order costs and damages in the circumstances because no contravention of the Code or the Regulation had been proven. While the applicants had established that some person(s) had abused the Board's processes by forging membership cards, they had not established that the Union had forged cards or had known they were forged when it applied for certification. That being the case, the Panel did not find the other conduct of the Union to be sufficiently egregious, by itself, to merit an award of costs and damages. *Held*: Union's certification cancelled and continuation of the strike accordingly declared to be unlawful. No time bar, costs or damages ordered.

Partial Decertification

White Spot Limited [Certain Employees of], BCLRB No. B16/2001 – Certain Employees and White Spot applied for reconsideration of a decision dismissing Certain Employees' application for partial decertification of a CAW, Local 3000 bargaining unit: BCLRB No. B440/99. Certain Employees' application was dismissed by an original panel applying the Board's *Westar* policy respecting partial decertification. The reconsideration focussed on the currency and validity of the *Westar* policy.

On revisiting the *Westar* policy, the Panel observed that the policy's requirement that an applicant group demonstrate changed circumstances such that their continued inclusion in the existing unit was inappropriate had the effect of making partial decertification virtually impossible. The Panel concluded that the "changed circumstances" requirement was no longer appropriate. The Panel altered the Board's policy with respect to partial decertification to give increased recognition to the factor of employee wishes, although employee wishes will still not be determinative. As a threshold requirement, an application for partial decertification will only be granted where both the group of employees departing and the group remaining are "appropriate bargaining units". Factors to be considered in assessing an application include the impact of granting the application on the employees in the remaining unit (e.g., on collective agreement rights) and on the union's collective bargaining relationship with the employer (e.g., whether it would have a destabilizing effect). Other relevant considerations include the timing of the application, employer interference, the possibility of a "disguised raid," and the practical possibility of decertifying the entire unit. Certain Employees' application was remitted to a new panel to be determined in accordance with the Board's new policy. *Held*: Application for reconsideration granted.

White Spot Limited [Certain Employees of], BCLRB No. B336/2001 – Application for reconsideration dismissed in BCLRB No. B437/2001 – Application for judicial review pending – The Panel considered Certain Employees' application for partial decertification from a bargaining unit represented by CAW Local 3000, in accordance with the Board's new policy articulated in BCLRB No. B16/2001 (the "Reconsideration Decision"), which overturned the dismissal of Certain Employees' application in BCLRB No. B440/99 (the "Original Decision").

The Panel observed that full decertification under Section 33 remained the presumptive means for obtaining

decertification, and partial decertification by way of a variance under Section 142 was thus an exceptional means of proceeding. It would apply primarily to bargaining units created through the "building block" approach, where the group seeking to leave was the same group that had previously been varied into the unit. In the case at hand, the employees seeking partial decertification worked at a single, geographically separate restaurant which had been varied into the larger unit in 1996.

The Union argued the Panel was bound by the Original Panel's finding that the group seeking to leave did not constitute an appropriate unit. Therefore, the Union argued, Certain Employees did not meet the "threshold requirement" of the Board's new policy. The Panel rejected this argument. It found that the Original Panel's conclusions regarding appropriateness were mixed findings of fact and law which were based on, or affected by, its application of the *Westar* policy which was overturned by the Reconsideration Panel. Upon conducting its own assessment, the Panel found the unit appropriate; thus, the "threshold" requirement was met.

The Panel rejected the Union's argument that the Reconsideration Decision placed an onus on Certain Employees to demonstrate that they have unsuccessfully attempted other, less drastic solutions to deal with the problems in the bargaining unit than partial decertification. The reconsideration Decision did not impose an onus on Certain Employees to prove they have exhausted other avenues before filing a partial decertification application. Rather, it expressed the Board's desire to encourage parties to take advantage of the Board's mediative mechanisms and explore other, less drastic and more creative solutions in good faith. The Board expects, and can require, parties to explore such options through a mediative process in good faith. Parties should remain cognizant of the fact that applicants have no "right" to partial decertification, but rather are seeking to have the Board exercise its discretion in favour of granting them a limited remedy.

The Panel held that the impact of the partial decertification on the other employees in this case would be relatively limited, and not sufficient to outweigh the wishes of the employees seeking to leave the unit. It also found that the impact of the partial decertification on the collective bargaining relationship would likely be minimal.

The next factor to consider was the practical impossibility of full decertification. The Panel held that the inquiry on this element of the test should focus largely on objective impediments to full decertification (e.g., the size of the unit, and geographic separation) rather than evidence of past attempts to decertify. The Panel held that, even if the Original Panel's conclusion (that full decertification was "not totally unrealistic") met the new test of "practical impossibility", this factor was only one to be considered, and in these circumstances it was not determinative. *Held:* Test for partial decertification met by Certain Employees; vote ordered counted.

Pacific Opera Victoria Association [Certain Employees of], BCLRB No. B344/2001 – Certain Employees applied under Section 142 for a partial decertification of the administrative employees. The bargaining unit consisted

of two components, the administrative and the production employees. The Union objected to the application on the basis that: two administrative positions shared a community of interest with production employees; Certain Employees failed to meet the threshold test for decertification as set out in *White Spot*; and the impact of the partial decertification on the remaining employees outweighed the wishes of Certain Employees to leave the bargaining unit. The Union argued the remaining employees would be denied training and career development opportunities as well as the ability to transfer and retain seniority in the bargaining unit.

The Panel noted that partial decertification is an exception to the Board's general policy that union representation will be determined on the basis of the wishes of the majority of the bargaining unit as a whole. Partial decertification is particularly applicable to a bargaining unit created through the building-block approach when the same group varied in seeks to leave. The Panel first determined that the threshold requirement to grant a partial decertification was met; that is, both the bargaining unit remaining and the group seeking to leave met the Board's definition of appropriateness. The Panel then considered the impact on the employees remaining in the bargaining unit. The impact must be real and not hypothetical. The Panel found that the impact on collective agreement rights fell into the realm of hypothetical effects. In all of the circumstances, the impact of the partial decertification on the employees remaining in the bargaining unit would be insignificant. *Held:* The vote was to be counted.

Lifestyle Retirement Communities Ltd. [Certain Employees of], BCLRB No. B371/2001 – Certain Employees applied under Section 142 to delete one of the Employer's locations, Parkwood Retirement, from the certified bargaining unit. The original certification covered three Employer locations, Parkwood Retirement, Parkwood Care and Kensington.

The Panel found that even if it assumed that the threshold test in *White Spot* had been met (that a rational and defensible line can be drawn around the group leaving the unit and that the group remaining is appropriate for collective bargaining) Certain Employees' application did not succeed. In doing so, the Panel canvassed the factors in *White Spot* and weighed them against the wishes of Certain Employees.

First, the Panel found that there would be a real and significant impact on remaining employees if Parkwood Retirement was removed from the unit because there was a real impact on the collective agreement entitlements of the remaining employees. For example, it would reduce opportunities for employee mobility and limit opportunities to exercise seniority related to entitlements under the collective agreement. Second, it was practically possible to organize the decertification of all three sites. In reaching this conclusion, the Panel considered the following: the fact that the Union had organized a majority of employees at all three sites; a group of employees tried to mobilize support to decertify the Union at a meeting at which employees from all three sites attended; the number of persons at each site; and the geographic proximity of the sites. *Held:* Certain Employees' application dismissed.

CONTINUATION OF BARGAINING RIGHTS

Successorship – Employer

Naya Inc. (Receiver-Richter & Associates Inc.), BCLRB No. B232/2001 – The Employer was pronounced bankrupt and the I.W.A. applied for a declaration that the Trustee in Bankruptcy was a successor employer. The Trustee sought a stay of the successorship proceedings. It argued that the Board could not proceed because the Quebec Superior Court had ordered that the Trustee shall not be deemed a successor employer, and because the provisions of the *Bankruptcy and Insolvency Act ("BIA")* stayed all proceedings before the Board.

The Panel was not persuaded that the *BIA* stays all proceedings before the Board. However, when there is a conflict between provincial legislation such as the *Code* and the federal *BIA*, the provincial legislation must yield to the *BIA* to the extent of the conflict. The Board will determine on a case-by-case basis whether a successorship application raises a conflict with the *BIA*'s scheme for distribution of debtor assets. Here there was a potential conflict with the *BIA*'s system of priorities because the Union sought a declaration evidently to allow it to pursue a remedy against the Employer's property.

Disregarding the Quebec Superior Court Order would be contrary to the rule against collateral attack since the Union did not challenge the Court's jurisdiction to make the Order. The Union's application was a collateral attack on the Order despite the fact that successorship occurs "by operation of law" and the Union only sought a declaration. Granting a successorship declaration would be directly contrary to the Order. The proceedings were stayed unless the Order was varied to permit the Union to make its application to the Board. *Held*: Trustee's application for a stay granted.

Sears Canada Inc., BCLRB No. B239/2001 – IUOE, Local 882 and Carpenters, Local 1598 (the "Unions") each applied to have Sears declared the successor employer to Eatons at a Victoria store acquired by Sears after Eatons' bankruptcy. Earlier, Sears had successfully applied to the Board to be declared the successor employer at the Victoria store with respect to the certification held by the Eatons Employees' Association, which represented a different group of employees. Sears did not assert that there was only a partial successorship. The issue in this decision was whether Sears could argue in response to the Unions' applications that no successorship had taken place, or whether it was bound by its previous position on successorship.

The Unions argued that Sears could not "approbate and reprobate". The Panel reviewed the relevant law and decided the principle did not apply in this instance. Nor was the issue *res judicata*. However, the Panel held that Sears should not be permitted to deny the existence of a successorship at the Victoria store, for three reasons. First, it would be destructive of good labour relations and inconsistent with Section 2(1)(d) of the Code to allow Sears to take a position in response to the Unions' applications that was inconsistent with its own prior successorship application (in which it succeeded). Second, the principle of abuse of process prevented Sears from re-litigating the issue of successorship with

respect to the Victoria location. Third, to allow Sears to oppose the successorship now would be to permit it to make a collateral attack on the first decision, which held there was a successorship. *Held:* Sears prohibited from denying successorship in response to Unions' applications.

Common Employer

KFCC/Pepsico Holdings Ltd., BCLRB No. B283/2001 – CAW applied for reconsideration of BCLRB No. B225/98 wherein the majority of the original panel dismissed CAW's application for a declaration that a franchisor and franchisee constituted a common employer. Leave was granted in BCLRB No. B390/98.

The Reconsideration Panel found that common control and direction can be established in circumstances such as franchising where no one corporate entity or individual has complete or exclusive control and direction. The *CCAG* factors are the starting point for consideration of common control or direction. In the franchise context, the application of those factors is aimed at revealing the distribution of power in the operation of the related businesses and whether sufficient control exists for a finding of common control or direction. Sufficient control will be found if the franchisor enjoys substantial control over the franchise business. Substantial control is control "of real importance or value, of considerable amount". It is both a qualitative and quantitative test. If common control and direction is established, the Board will then consider the validity of the labour relations purpose being advanced against the facts of the particular case, the purpose of Section 38, and the relevant purposes in Section 2 of the Code.

It is not inconsistent with the franchisor exercising substantial control over the franchise for the franchisee to exercise no control, some control or substantial control. Each combination may not be served best by the same labour relations outcome. While selecting the best labour relations outcome, the Board may consider the appropriateness of: single versus multiple certifications; a single bargaining table; a single bargaining structure with multiple tables; completely separate bargaining structures; and directions or conditions concerning bargaining protocols. *Held:* Union's application for reconsideration granted. Original decision cancelled. Matter referred back for assignment to a new original panel.

Norske Skog Canada Limited, BCLRB No. B469/2001 – Two companies, Norske and Allwin, sought a common employer declaration which was opposed by the Unions (CEP and PPWC). The only issue was whether a labour relations purpose existed for making the declaration.

Allwin was created as a joint venture between Norske and another company, ABB, to carry out the maintenance at Norske's pulp mills. On March 1, 2000, Norske transferred about 300 of its maintenance employees to Allwin. The employees were at all times subject to collective agreements negotiated between Norske and the Unions. However, before the transfer, the maintenance employees were included in all-employee bargaining units and were covered by collective agreements for the certified units at their respective mills. After the transfer, they would be working for a separately certified

business which provided only maintenance services to the pulp mills under a fixed-term contract.

The Unions argued the Board should not sanction, by granting a retroactive common employer declaration, the unilateral transfer of employees to a different employer. The Panel held that a common employer declaration was appropriate in the circumstances as long as it did not override the individual rights of the maintenance employees to elect whether to become employees of the single employer comprised of Norske and Allwin, or instead to exercise whatever options they may have had under the collective agreements with Norske. *Held:* Common employer declaration granted but made subject to the right of individual employees to decide whether they wished to work for the single employer or exercise their collective agreement rights.

ARBITRATION

Review of Arbitration Awards

South Victoria Home Care Society, BCLRB No. B61/2001 – The BCGEU applied pursuant to Section 99 for review of an arbitration award on the basis that it was denied a fair hearing because the arbitrator allowed the Employer to rely on material that was not properly admitted as evidence. The Union said that the arbitrator accepted unreliable hearsay evidence contained in notes prepared by the Employer over the oral testimony led by the Union.

The Panel held that the fact that the case involved an expedited arbitration was important. Before undertaking a review of an expedited arbitration award, the Board will closely scrutinize the grounds on which the award is attacked. If the award is capable of another reading or characterization which will permit the award to stand, the applicant's chances of success are remote. The expedited process is intended to embody quick and rough justice. That is why it is non-precedential and why review will rarely occur: see Section 2(1)(d); see also *Simon Fraser University* and *Lornex*.

The Panel rejected the argument that it was implicit in the award that the arbitrator relied on the hearsay evidence to reach his conclusions. With respect to the Union's other argument, the Panel was not prepared to find that the Union's oral evidence would necessarily trump the Employer's hearsay evidence produced by way of submission. In expedited arbitration, arbitrators are free to assess the weight to be given to evidence in the circumstances and whether additional weight ought to be accorded to oral evidence as against that presented by way of submission. *Held:* Union's application dismissed.

Health Employers Association of British Columbia Central Vancouver Island Health Region (West Coast General Hospital), BCLRB No. B188/2001 – The BCNU applied under Section 99 contending that the Union would likely be denied a fair hearing in an arbitration as a result of the appointment of an employee of HEABC as the employer's nominee to a tripartite arbitration board. The arbitration board was constituted to hear a dispute involving the interpretation of the provincial collective agreement that had been negotiated by HEABC and the Nurses' Bargaining Association. The Union argued that the employer nominee's independence was com-promised by virtue of his employment status to such a degree

as to give rise to a reasonable apprehension of bias.

The Panel conducted a thorough review of the relevant law and issues concerning arbitration boards. It held that in the context of the legislation, the expectations of the industrial relations community, and the authorities in British Columbia, the appointment of an employee of one of the parties as that party's nominee to an arbitration board does not *per se* constitute a denial of a fair hearing or the rules of natural justice. Absent an allegation of actual bias, the circumstances in this case did not give rise to a reasonable apprehension of bias. *Held*: BCNU's application dismissed.

Southam Inc. (The Prince George Citizen and Prince George This Week), BCLRB No. B248/2001 – CEP, Local 1997 applied under Section 99 for review of an arbitration award concerning a union grievance that the employer was in violation of the provisions of three parts of the *Employment Standards Act*. The arbitrator had declared that the union was estopped from advancing this claim because it had expressly agreed that the delivery drivers on whose behalf the grievance was brought were not employees. Notwithstanding that agreement, the Union filed the grievance in which it sought a declaration that the delivery drivers were employees under and entitled to the benefits of the *Act*.

The Panel found that the provisions of the *Act* in issue represent policy of significant social importance and impose a clear positive duty on employers and unions. Further, parties cannot contract out of the minimum requirements of the *Act*. Therefore, arbitrators must give effect to the provisions of the *Act* despite what would otherwise be an unassailable argument founded on the doctrine of estoppel. While arbitrators retain a discretion with respect to the compensation to which a party is entitled on the basis, for example, of delay, they cannot give effect to an estoppel argument which would, in effect, allow the parties to contract out of the minimum requirements of the *Act*. Accordingly, the arbitrator's estoppel declaration was inconsistent with the principles expressed or implied in the Code and with the *Act*. *Held:* Union's application allowed; award remitted to the arbitrator to consider the grievance again in light of the panel's comments.

University of British Columbia, BCLRB No. B270/2001 – The Employer applied for reconsideration of BCLRB No. B432/2000, which granted CUPE, Local 116's Section 99 application for review of an arbitration award. The Award had held that a "sunset clause" requiring removal of prior disciplinary records also operated to reduce the grievor's length of service for purposes of the *Wm. Scott* analysis.

The Reconsideration Panel assumed for purposes of this application that parties can negotiate collective agreement provisions which place limits on an arbitrator's inquiry under Section 89(d) of the Code. It also assumed that the interpretation of such a provision formed part of the "law of the contract". It noted that there is no apparent reason why limits on length of service cannot be negotiated in the same fashion as sunset clauses on disciplinary history.

However, in this case, the collective agreement provision relied upon by the Arbitrator made no reference whatsoever to length of service. A clause dealing with

disciplinary history was used to reduce the grievor's length of service. The Arbitrator effectively amended the parties' collective agreement and thus exceeded her jurisdiction. The Panel accordingly upheld the original decision, though for reasons different than the original panel's.

The Panel next considered the original panel's direction that the matter be referred to a new arbitrator. The Panel held that regardless of whether the original panel properly exercised its discretion at the time, there were now complicating features of this proceeding which must be considered before substituting a different remedy. The Union's Section 99 application advanced several grounds for setting aside the Arbitrator's Award. The remaining grounds were not addressed by the original panel and not argued before the Reconsideration Panel. Those grounds would have to be adjudicated before the matter could be remitted to the same Arbitrator. This raised the prospect of yet another reconsideration application before the grievance could be returned to the arbitral forum. The Panel concluded that the objective of expedited dispute resolution would more likely be served by affirming the original panel's direction that the matter be remitted to a new arbitrator without further delay. *Held:* Leave granted, and Employer's application for reconsideration dismissed.

Paddy Goggins, BCLRB No. B288/2001 – Application for judicial review pending – Goggins, a welder, suffered a serious workplace injury that resulted in a permanent partial impairment in the use of his left arm. After concluding it could not accommodate his disability short of undue hardship, the Employer terminated Goggins' employment on a non-culpable basis. CEP, Local 76 grieved the termination. Subsequently, the Union and the Employer settled the aspect of the grievance that alleged the Employer had failed to accommodate Goggins in the workplace: they agreed on a process for an independent expert to perform a functional evaluation of Goggins' capacity to perform welding duties in the mill. The expert concluded that Goggins could not return to working as a welder. Subsequently, the Employer reinstated Goggins to employee status. Because of the settlement of the accommodation issue and Goggins' reinstatement, the only outstanding issue before the arbitrator was remedy. The arbitrator ordered that Goggins be made whole for the period of time he had been denied employee status. This award was challenged by Goggins under Section 99 of the Code. He argued, among other things, that the arbitrator erred in not determining the accommodation issue despite the settlement agreement between the Union and the Employer. The original panel upheld the award, finding that the Union and the Employer had settled the issues Goggins disputed.

On reconsideration, the Panel rejected all grounds of review. In particular, it held that the agreement between the Union and the Employer to decide the accommodation issue by engaging an independent expert to perform a functional evaluation was not a waiver of Goggins' right to reasonable accommodation under the *Human Rights Code*. The Panel further found that the Union could settle the reasonable accommodation aspect of Goggins' grievance by use of this process without Goggins' consent. Grievances that raise human rights issues are not statutorily or otherwise exempted from a union's power of exclusive bargaining agency, which

gives it the right to settle a grievance without the grievor's consent. Section 12 protects against the prospect of a grievor's human rights grievance being handled in a discriminatory manner by the union. The original panel correctly concluded that, as long as Section 12 requirements are met, a union can settle a grievance, including one involving human rights issues, without the grievor's consent. *Held:* Goggins' application for reconsideration dismissed.

Pacific Newspaper Group Inc., A Division of Southam Publications, BCLRB No. B395/2001 – Leave for reconsideration denied in BCLRB No. B7/2002 – The Employer applied under Section 99 for review of an arbitrator's oral ruling denying an adjournment. CEP, Local 2000 had applied to the Collective Agreement Arbitration Bureau for appointment of an arbitrator pursuant to the expedited arbitration provisions of Section 104. CAAB appointed the Arbitrator and set the date for commencement of the hearing. The Employer applied to the Arbitrator for an adjournment of that date. The Arbitrator held he had no jurisdiction or discretion to grant an adjournment once CAAB set the date for commencement of the hearing pursuant to Section 104(4)(b).

The Panel concluded the Arbitrator's oral ruling was incorrect and set it aside. It held that Section 104(4) directs CAAB to set the hearing date; it contains no direction to the arbitrator, and does not remove an arbitrator's discretion to grant an adjournment. Accordingly, the Arbitrator's ruling that he had no discretion deprived the Employer of a fair hearing, and was inconsistent with the principles of the Code. The Panel noted, however, that arbitration under Section 104 is an expedited process and any request for adjournment should be considered with that in mind. *Held:* Employer's application granted; request for adjournment remitted to Arbitrator to consider.

Removal of Counsel

Construction Industry Affiliated Trade Unions and/or Operating Engineers Welfare Plan, BCLRB No. B76/2001 – The OTEU applied under Section 99 seeking review of an interim arbitration award which resulted from CIATU's application for removal of OTEU's counsel on the basis of conflict of interest.

CIATU is the accredited bargaining agent for a number of employers consisting of building trades unions and their related health and welfare plans. In front of the arbitrator CIATU argued that OTEU's counsel was disqualified from acting because he had acted in the past and continued to act for Local 1611 of the Construction and Specialized Workers Union. Local 1611 was one of the employers covered by the collective agreement between CIATU and OTEU. The arbitrator ruled that neither OTEU's counsel nor other counsel from the same firm could act on the matter. Upon reconsideration, OTEU argued the arbitrator misapplied the law of conflict of interest.

Without deciding definitively whether this matter was properly before the Board under Section 99, the Panel assumed its jurisdiction extended to this issue. The Panel found the arbitrator accurately stated the two-part test for conflict of interest: 1) did the lawyer receive information attributable to the solicitor-client relationship that is relevant to the matter in hand; and 2) is there a risk that information

could be used to the prejudice of the client? The Panel found no reviewable error made by the arbitrator on the second prong of the test. The arbitrator found the second part of the test had been met because Local 1611 would be directly impacted by being bound by the arbitration award pursuant to Section 95.

As regards the first prong of the test, once a sufficiently close relationship is established, a rebuttable presumption arises that confidential information was imparted. The Panel could not readily discern from the award the basis on which the arbitrator found a sufficiently close relationship. In other circum-stances it would have referred the issue back to the arbitrator for further reasons. However, the issue was effectively moot given that both parties had retained different counsel and proceeded with the merits of the arbitration. *Held*: OTEU's application dismissed as moot.

Deferral to Arbitration

7-Eleven Canada Inc., BCLRB No. B19/2001 – UFCW, Local 1518 applied for reconsideration of BCLRB No. B30/2000 in which its unfair labour practice complaints were dismissed. The Union had alleged that upon closing two unionized stores, the Employer refused to transfer bargaining unit members to other stores in keeping with a company-wide transfer policy and that this refusal constituted improper discrimination under the Code. The original panel concluded that the matters raised in the Union's complaints could be dealt with under the arbitration process under the parties' collective agreement and deferred to that process.

Following the deferral, no new grievances were filed by the Union. The Union pursued to arbitration one pre-existing grievance relating to the closure, but the arbitrator concluded that the transfer/discrimination issue was not within the scope of that grievance. The Union sought to have the original decision set aside and have the Board adjudicate its unfair labour practice complaints.

A deferral under the *Repap Carnaby* analysis is to the grievance and arbitration *process*, and not to any outstanding grievance *per se*. The effect of such a deferral is not to confer jurisdiction upon an arbitrator. Absent an express direction from the Board or the parties' agreement, an arbitrator can only become seized of jurisdiction through the grievance process provided under the collective agreement. Further, the general effect of a deferral under *Repap Carnaby* is to dismiss the Board application in favour of arbitration as a more appropriate forum. Once an unqualified deferral is made and the case is dismissed, the Board's jurisdiction with respect to the Board complaints is exhausted (subject to reconsideration). If the timeliness of any initial or further grievance is in issue, that is a matter properly raised before the deferring panel. Moreover, where an original panel is satisfied that there is a real question as to whether arbitration on the merits will be available, the panel may reserve ongoing jurisdiction.

Here, the original panel had correctly concluded that issues raised by the Union's unfair labour practice complaints were capable of being addressed under the collective agreement arbitration process. The grievance process was capable of providing an adequate remedy for the matters raised by the Board complaints.

The original panel's decision to defer was consistent with the Code. *Held*: Leave for reconsideration denied and Union's application for reconsideration dismissed.

Doman-Western Lumber Ltd. (Saltair Sawmill Division), BCLRB No. B265/2001 – IWA, Local 1-80 alleged that the Employer refused to schedule employees to work on March 5, 2001, and that this constituted a lockout under the Code. The issue before the Panel was whether the matter should be adjudicated by the Board or referred to arbitration under the collective agreement.

The Panel held that in the context of Part 5 complaints, the Board will decline jurisdiction where the conduct has ceased and the complainant has access to an adequate remedy under the collective agreement. The alleged lockout was an isolated incident, occurred some time ago and there was no indication that a similar problem will arise in the future. There was no suggestion by the Union that an arbitrator would not be able to provide adequate relief. *Held*: Union's complaint dismissed.

COLLECTIVE BARGAINING

Collective Bargaining – General

Catholic Independent Schools Diocese of Prince George, BCLRB No. B112/2001 – The Employer applied for reconsideration of BCLRB No. B253/2000. The original panel held the Employer violated the duty to bargain in good faith with BCGEU by bargaining to impasse a demand inconsistent with the Code. It found that the Employer had demanded in bargaining that the Bishop of its diocese would have final authority to determine discipline or dismissal where teachers allegedly breached Catholic standards. The Bishop's determinations would not be subject to arbitral or third party review. The central issue on reconsideration was whether such a demand is inconsistent with the Code. Also in dispute was the original panel's finding that the Employer violated Section 11 by engaging in surface bargaining.

The Reconsideration Panel dismissed the Employer's application for reconsideration of the conclusion that it violated Section 11 by bargaining to impasse a demand inconsistent with the Code. The Panel found that *Marion High* was distinguishable from the case at hand. *Marion High* dealt with bargaining to impasse a demand that teachers observe Catholic standards in their personal lives. Here, the Employer bargained to impasse a demand that its Bishop have final, non-reviewable authority to determine employment discipline or dismissal where teachers allegedly breach Catholic standards. Bargaining that to impasse was inconsistent with Section 84(2) of the Code.

The Reconsideration Panel granted the Employer's application for reconsideration of the original panel's finding of surface bargaining. Surface bargaining is bargaining with no intention to conclude a collective agreement. However, the original panel found that the Employer possessed the requisite intention to conclude a collective agreement on the last bargaining meeting between the parties. The finding of an intention to conclude a collective agreement goes to the very essence of the allegation of surface bargaining. The Reconsideration Panel held that the original panel therefore erred in finding the Employer guilty of surface bargaining. *Held*: Employer's application for reconsideration granted in part.

Corporatel West, BCLRB No. B150/2001 – BCGEU applied for an order that the Employer's last offer vote, which had been sealed, be destroyed and that the Employer be ordered to return to the bargaining table until either a collective agreement was reached or a strike or lockout executed. The Panel accepted the Union's argument that, under Section 78, the potential for a strike or lockout to occur must exist before a last offer vote application can be made. In this case, the parties had met once and agreed to some issues. They had not exchanged key monetary issue proposals. Very little collective bargaining had taken place; not enough to meet the requirements under Section 59 for a strike vote to occur. Without the threat or potential for a strike, the Section 78 last offer vote application was premature and should therefore not be counted. The Panel nonetheless empathized with the Employer's need for an expeditious bargaining process, and ordered the Union to set aside a block of days for collective bargaining within 10 days from the date of the decision. *Held:* The last offer vote which was taken and sealed was not to be counted.

CONSTRUCTION INDUSTRY

Construction Industry - General

Construction Labour Relations Association of British Columbia, BCLRB No. B244/2001 – Application for reconsideration granted in part in BCLRB No. B269/2001 (see following) – Application for judicial review dismissed January 16, 2002 – The Plumbers and the Boilermakers applied for a declaration that the collective agreement negotiated between CLRA and the Bargaining Council of British Columbia Building Trades Unions was not binding on them. CLRA applied for a declaration that its agreement with the Bargaining Council was a collective agreement binding on all building trades unions, including the Plumbers and the Boilermakers. CLRA also sought a declaration that an individual building trades union could not engage in single trade collective bargaining without CLRA's consent.

CLRA and the Bargaining Council began collective bargaining in 1998, and concluded it in December 2000. During the course of bargaining, the Bargaining Council passed motions releasing the Plumbers and the Boilermakers to bargain on a single-trade basis. CLRA and the Bargaining Council reached an agreement December 21, 2000. The Bargaining Council passed a motion approving the agreement, and a motion reaffirming that it was not binding on the Plumbers or the Boilermakers. Afterward, the members of the Bargaining Council went their separate ways for the holidays, leaving the Chair of the Bargaining Council to conclude the agreement with CLRA. The Chair advised CLRA that the Bargaining Council had confirmed the Plumbers and Boilermakers were not bound by the Agreement. CLRA said this was the first time it had heard that the Bargaining Council considered the Plumbers and Boilermakers to be excluded from the deal. Ultimately, CLRA proposed that a proviso be inserted into the agreement that would have the Board decide who was bound by the agreement, and if the Board found the Plumbers and the Boilermakers were excluded from it, the deal was off. The Chair of the Bargaining Council agreed.

The first issue was whether the Bargaining Council's motion to release a building trade union to bargain on a single-trade basis was effective without agreement from CLRA. The Panel held it

was not. Part 4.1 of the Code legislated multi-trade collective bargaining for construction building trades in the ICI sector, and designated the Bargaining Council as statutory bargaining agent for all building trades unions involved in ICI construction, and CLRA as bargaining agent for the employers. Although the constitutions of CLRA and the Bargaining Council allowed single trade bargaining, a party cannot take the issue of bargaining format to impasse. Therefore, neither CLRA nor the Bargaining Council could change the multi-trade collective bargaining format unilaterally. If the other party did not agree, either expressly or through its conduct, the default position (multi-trade collective bargaining) prevailed.

Turning to the events of December 2000 and the issue of whether a collective agreement was in force, the Panel held the Building Council effectively repudiated its agreement with CLRA by its statement to CLRA that the Plumbers and Boilermakers were not bound by the agreement. It was open to CLRA to reject that repudiation and to apply to the Board for a declaration that there was a binding collective agreement. Instead, CLRA countered with a proposal to adjust the deal with a proviso that if it was unsuccessful at the Board (concerning the scope of the agreement), the deal was off. This was a new proposal, which effectively accepted the Bargaining Council's repudiation of the earlier agreement. However, the Chair of the Bargaining Council had no authority to accept the new proposal unilaterally, without reconvening the Bargaining Council. As a result, the Bargaining Council was now required to vote on the new offer. *Held:* Union's applications dismissed.

Construction Labour Relations Association of British Columbia, BCLRB No. B269/2001 – Application for judicial review dismissed January 16, 2002 – The Plumbers and the Boilermakers each applied for reconsideration of BCLRB No. B244/2001, which held that they could not bargain on a single-trade basis in the ICI construction sector without CLRA's consent.

On reconsideration, the Panel agreed with the original panel's conclusion that single-trade negotiations required the consent of both statutory bargaining agents: CLRA and the Bargaining Council of B.C. Building Trades Unions. This conclusion was supported by Part 4.1 of the Code, by the recommendations of the Construction Industry Review Panel, and by the bargaining agents' constitutions and by-laws.

The Reconsideration Panel then turned to consider the original panel's conclusions regarding the last round of bargaining between CLRA and the Bargaining Council. The Panel agreed with the original panel's conclusion that CLRA had accepted the Bargaining Council's repudiation of their agreement by making a counteroffer. However, the Panel held that the original panel erred in effectively ordering the Bargaining Council to table a motion on whether to ratify its Chair's acceptance of CLRA's counteroffer. Assuming the Board had jurisdiction to make such an order, there was no basis to circumscribe how the Bargaining Council should respond to CLRA's proposal. The order potentially put CLRA in a better position than when it initially made the proposal, and it risked overriding provisions of the Bargaining Council's Constitution. This aspect of the original decision was therefore set aside. *Held:*

Plumbers' and Boilermakers' applications for reconsideration granted in part.

LABOUR DISPUTES

Essential Services

Health Employers Association of British Columbia, BCLRB No. B125/2001 – HEABC applied under Section 141 of the Code for reconsideration of BCLRB No. B118/2001. The original panel imposed interim essential service level designations for a number of facilities in the health industry under Section 133(5), pending a designation under Part 6 of the Code. Facilities which had not yet agreed to essential service levels or had their essential service levels adjudicated, were subject to an interim order designating their levels on the following basis: (i) the 1998 levels plus any changes agreed upon during the negotiation/mediation process; (ii) in recognition of changes since 1998, the standard emergency provision of Section 7 of the Board's "global" (or standard) order would be expanded to allow employers to call in enough staff to cover services to prevent "immediate and serious danger to the health, safety or welfare" of the public; and (iii) new programs implemented since 1998 would be staffed at the employer's last proposed position.

HEABC argued the original panel erred in refusing to hear what HEABC characterized as "crucial evidence on the outstanding issues" and that it was unfairly limited to a two hour oral submission before the original panel. It asserted the original panel had failed to comply with Section 126 which directs the Board to "give full opportunity to parties to a proceeding to present evidence and make submissions". Noting that the application of the principles of a fair hearing is dependent on the nature of the proceeding in question, the reconsideration panel found the original panel had not erred. Interim orders, by their nature, do not require a full adjudication of the matter. Moreover, Section 133(5) of the Code, which requires only that parties be "given an opportunity to be heard" prior to issuance of an interim order or designation, is an express qualification of Section 126(1). *Held*: HEABC's application for reconsideration dismissed.

All Boards, as Defined in the School Act, in the Province Represented by British Columbia Public School Employers' Association, BCLRB No. B409/2001 – The BCPSEA applied under Section 72 for designation of essential services. This decision dealt with whether any aspect of Phase 1 of the BCTF's phased-in job action plan is necessary or essential to prevent immediate and serious danger to the health, safety or welfare of the residents of B.C. or to prevent immediate and serious disruption to the provision of educational programs. The parties reached agreement on a number of issues on a "without prejudice" basis and the Panel adjudicated outstanding matters. The Panel listed activities that BCTF members need not perform during Phase 1 job action. Activities not listed must be continued during Phase 1. In addition, any before/after school, recess or noon-hour supervision normally provided by teachers, before/after school supervision related only to bus drop-off and pick-up, and recess supervision will continue to be provided by teachers subject to the Employer using management and excluded staff to the best extent possible. Where there are no Administrative Officers at a school, Teachers In Charge must continue their

normal duties. Teachers are also to be available in the event of any emergency or disaster situation. In the event of a dispute about whether an emergency or disaster exists, teachers will perform the work in question.

All Boards, as defined in the School Act, BCLRB No. B455/2001 – The Panel issued an interim decision on the definition of "provision of educational programs" in Section 72 of the Code.

It found the Legislature intended to ensure the continuation of education in the event of a labour dispute but did not intend to take away the teachers' ability to strike. The Panel concluded that "provision of educational programs" must be broader than the definition of "educational program", as the *provision of* an organized set of learning activities must encompass something more than the activities themselves. The definition includes concepts like supervision and assessment, and might include work study and work experience programs. Further, there may be goods and services and educational materials which are necessary to meet the learning outcomes and assessment requirements of an educational program, and are therefore part of the "provision of educational programs". Not all services or activities provided by a school board are necessarily part of the "provision of educational programs". There must be some limit to an educational program and therefore also to what is involved in the "provision of educational programs"; e.g., activities or services provided by a school board which are optional or voluntary and outside the curriculum set by the school board may fall outside of the "provision of educational programs". Given the Board's cautious approach in this case of first instance, the Panel found it appropriate to refine the definition further during the adjudication of extra-curricular activities and Phase 2 job action when the Panel can consider the matter within the proper context. *Held*: Interim order issued.

Strike Vote

Johnston Packers Ltd., BCLRB No. B234/2001 – The Employer alleged UFCW, Local 1518 failed to conduct a pre-strike vote in accordance with Sections 39 and 60 of the Code and Regulation 13. The vote was held in a hotel boardroom. The place designated for employees to mark their ballots was a table six to eight feet long, with a coffee urn and cups at one end. Some employees remained in the room after marking their ballots and stood at or near the ballot table while other employees marked ballots. No employees complained, but one employee testified that she marked her ballot in the washroom because she was afraid if she marked her ballot at the ballot table, someone might observe her choice.

The Panel upheld the Employer's challenge, and declared the vote of no force or effect. Applying an objective test, the employees had a reasonable basis to be concerned about the secrecy of their vote. The Legislature has determined that both the privacy of the voter and the secrecy of the ballot are minimum requirements for a valid pre-strike vote. A secret ballot vote is required by Regulation 13 and by Section 39 of the Code. Regulation 20 only permits the Board to vary or suspend a provision of the Regulation if the privacy of the voter and secrecy of the ballot are maintained. *Held:* Employer's application granted; vote declared of no force or effect.

The Original Cakerie Ltd., BCLRB No. B369/2001 – The Employer applied for a declaration that the Teamsters' strike vote was invalid because the parties had not bargained collectively in accordance with Section 59 of the Code. The Employer said the parties had not exchanged any monetary proposals, let alone had any opportunity to discuss them. The Union argued the Employer could not determine the date of the strike vote by unilaterally determining when it would table or discuss monetary proposals.

In order to have "bargained collectively" in accordance with Section 59, parties must exchange proposals and there must be some discussion, or an exchange of views on all the key or central issues in dispute. Here, there was an exchange of proposals and views on all the key issues except for the Employer's monetary proposals. The Employer provided no reasonable explanation for why it was unable to provide a monetary proposal. It is not open to an employer to limit the scope or the quality of collective bargaining discussions and then rely on that fact to preclude a union from resort to a strike vote. *Held*: Employer's application dismissed.

Strike Notice

Health Employers' Association of British Columbia, BCLRB No. B128/2001 – HEABC applied to have the strike notice served by the Facilities Bargaining Association set aside. The strike notice had been served on HEABC, the accredited employers' organization for employers in the health industry, rather than on the individual member facilities as individual employers.

The Panel declared the strike notice served on HEABC to be of no force and effect. The term "the employer" as set out in Section 60(3)(b)(i) of the Code refers to the individual employers. This was to be inferred from the fact that Section 60(3) expressly refers to both "the employer" and the "employer's organization." Moreover, this reading was consistent with the fact that the employees would be on strike against their individual employers, and not against HEABC. As a matter of policy, it was logical that the individual employer whose operation would be affected by the strike should be entitled to receive notice of the strike.

The Panel rejected the Association's further argument that even if its strike notice was improperly served, it should be allowed to stand on the basis that the individual member employers were in fact aware that the strike notice had been served on HEABC and thus had not been prejudiced by the error. The language of Section 60(3)(i) is mandatory in nature. Nor was the error a mere "technical irregularity" that could be relieved against under Section 165 of the Code. Service of strike notice is a fundamental component of the regulation of strike activity under the Code. *Held*: Strike notice served on HEABC declared of no force and effect.

Illegal Work Stoppage

British Columbia Ferry Corporation, BCLRB No. B155/2001 – Leave for reconsideration denied in BCLRB No. B225/2001 – The Panel gave its reasons for an expedited decision issued the evening of March 14, 2001, declaring that the B.C. Ferry and Marine Workers' Union and its members were engaged in an illegal strike and ordering them to cease and desist. The engine room employees of the

vessel *Queen of Burnaby* had been refusing to work since 10:00 a.m. that day, claiming that their health and safety was in jeopardy due to the poor air quality in the engine room. Although the WCB declared that the conditions in the engine room did not pose an undue hazard, the employees continued with their work refusal. The Union said the workers had no confidence in the WCB or the consultant hired by the Employer to perform air quality testing. The Union argued that in the workers' own experience, the workplace was unsafe.

There was no question that the work refusal constituted an illegal strike unless Section 63(3)(a) of the Code applied. That section provides that an act or omission by a trade union or employees does not constitute a strike if it is required for the safety or health of those employees. The Panel noted that the test to be employed in applying Section 63(3)(a) was whether, at the time of the refusal to work, the employees had a good faith and reasonably-held belief that the refusal was necessary for their health and safety. Accordingly, whether or not the WCB had found that the workplace did not pose an undue hazard, if the employees had a good faith and reasonably-held belief that their health and safety was in jeopardy, then they were not engaged in a strike.

However, the Panel found that it did not have evidence to establish the existence of such a belief. None of the employees who refused to work testified. Even though there was objective evidence about the existence of a hazard, the Panel was unable to find that the employees had a reasonably-held good faith belief that their refusal to work was necessary for their health and safety. There was evidence that the Employer had recognized the hazard and that it would be controlled in the short term by the use of personal protective equipment. Further, the Employer was in compliance with a WCB plan to reduce exposure control, and the WCB had certified that the workplace did not present an undue hazard. In addition, the employees were willing to work in the engine room for a sailing the next day so that more air samples could be obtained. *Held:* Employer's application granted.

Board of School Trustees, School District No. 45 (West Vancouver), BCLRB No. B260/2001 – The BCTF and WVTA (collectively "the Union") were philosophically opposed to a new all-day Kindergarten program that was being implemented by the Employer. The BCTF issued an "in-dispute" designation directing teachers not to accept positions in the program. The Employer alleged that the Union had engaged in illegal strike activity contrary to Section 57. Alternatively, the Employer sought to have the "in-dispute" designation declared void pursuant to Section 70. Among other things, the Union argued that refusing to work in the new program could not amount to a strike because the work is outside of the duties required of teachers under the *School Act,* the School Regulation and the collective agreement.

The Panel found the Union had unlawfully declared and teachers had unlawfully engaged in a strike contrary to Section 57 of the Code. The "in-dispute" designation was designed to, and did effectively bring about, a concerted refusal by teachers to apply for or accept the work. While individual employees are entitled to determine for themselves whether they want to apply for posted positions, a *concerted* refusal to apply for positions can

constitute strike activity for the purposes of the Code.

The dispute about the program work could be adequately remedied through the arbitration process. The proper approach to be applied in these circumstances is that outlined in *Fletcher Challenge*, BCLRB No. B218/93. Once the Employer established that the work was of a nature and kind normally performed by its employees, the onus shifted to the Union to establish a clear and unambiguous right to refuse to perform the work. The Union did not meet this onus. Therefore the activity in question fell within the definition of a strike.

The Panel dismissed the Employer's Section 70 application because it was academic. However, the Panel noted that a union cannot manufacture a right to strike against its own employer during the term of a collective agreement by making and then observing its own hot declaration against that employer: *Simon Fraser University,* BCLRB No. 49/80. To the extent that a hot declaration operates as an unlawful strike declaration, it will be void as against the struck employer. *Held*: Union to rescind the "in-dispute" designation and cease and desist from making any such further designation.

Health Employers Association of British Columbia, BCLRB No. B382/2001 – BCNU asked the Panel to provide reasons for its Order issued August 8, 2001, which declared that the Union and employees it represented had violated Section 2(1)(b) of the *Health Care Services Continuation Act* (the "*Act*") and Section 67 of the Code by striking and picketing during a cooling-off period, and ordered them to cease and desist.

The Union specifically asked the Panel to address arguments advanced at the hearing concerning the purposes of the *Act*. The Union had argued that the *Act*'s purpose was to allow good faith collective bargaining to continue between the parties. However, collective bargaining ended when the Government introduced the *Collective Agreements Act* on August 7 and imposed a new collective agreement. Thus, the Union argued, the second cooling-off order imposed on August 8 was an improper and invalid exercise of ministerial discretion because the Minister had not acted consistently with the purpose of the *Act*. The *HEABC* argued that the purpose of the *Act* was to bring an end to disruptions in services and restore stability to the Province's health sector.

Referring to the debates in *Hansard* and the provisions of the *Act* itself, the Panel determined it had both purposes. Thus, the second cooling-off order was consistent with one of the purposes behind the *Act*. It followed that the strike and picketing activity by the BCNU was unlawful.

Picketing

Commuter Club Express, a Division of Blue Cactus Productions Inc., BCLRB No. B264/2001 – The Commuter Club Express ("CCE") applied for a declaration that picketing of its operations by the National Automobile, Aerospace, Transportation and General Workers Union of Canada, Locals 111 and 2200, was unlawful and for cease and desist orders. In defense, the Unions argued that CCE was an ally of the struck employer, Coast Mountain. The Unions also argued that by refusing to exercise its authority under the *GVTAA* and allowing CCE to

operate, Translink was an ally of Coast Mountain.

The Panel found that there was no evidence of any communication, contract, arrangement or understanding between CCE and Coast Mountain on any matter before or after the attempt by CCE to begin its commuter service. There was no evidence that CCE intended to assist Coast Mountain in its enterprise or that Coast Mountain stood to benefit financially from CCE's operation. The Panel found that CCE saw its function as being quite independent from Coast Mountain and as being in competition with it. The Panel concluded that CCE was acting for itself, not for or on behalf of Coast Mountain.

The Panel noted that the sole basis for the Unions linking Translink and Coast Mountain was Translink's failure to take action to shut down CCE's commuter service. However, acquiescence requires knowledge that a breach has or is about to occur. Translink only recently heard of CCE's plans and apart from the press reports Translink had no information on CCE's plans. In addition, it is not clear that the *GVTAA* would apply to the service provided by CCE. In any event, the Panel found that the evidence did not establish that any decision not to take action against CCE was taken by Translink and Coast Mountain in combination, in concert or in accordance with a common understanding. *Held*: CCE's application allowed.

Coquitlam Inn and Convention Centre Ltd. (Best Western), BCLRB No. B276/2001 – The Employer and CAW, Local 3000 concluded a picketing agreement. The Picketing Agreement provided for two picketing zones on Best Western's property at each of – but away from – the entrances to the two entrance driveways. The Agreement further provided that pickets would not walk back and forth across or stand in the driveways on the public sidewalk so that vehicles could enter and exit the parking lot. The Union did, however, specifically reserve the right to picket at the rear entrance. The Union subsequently set up pickets outside of the picketing zones on the public sidewalk away from the entranceways but beside the Best Western. The Employer applied to the Board alleging that the Union was in violation of the Picketing Agreement and seeking to have the Picketing Agreement converted into a Board order and filed in court.

The Panel held that, in keeping with normal labour relations practice extrinsic evidence (in this case, evidence of past picketing) could be used to establish the intent of the Picketing Agreement. The Panel further held that, assuming the Board had the jurisdiction to convert the parties' consent agreement into a Board order, the discretion to do so should only be exercised where there is a compelling labour relations purpose. In the absence of such a purpose, the conversion of an agreement into an order and its filing in court would unnecessarily escalate a labour dispute.

Given that picketing is a fundamental employee right, an agreement should only be interpreted as limiting that right where the limitation is clearly and unequivocally expressed. The Panel concluded that it was not the intention of the parties to prohibit picketing on public areas aside from the public sidewalks lining the parking lot entrances. CAW's express reservation of the right to picket the rear entrance was attributable to uncertainty as to whether the rear entrance was public or

private property. Thus, CAW had not breached the Picketing Agreement by picketing on public sidewalks away from the entranceways. As there was no breach, there was no labour relations purpose for converting the Picketing Agreement into a Board order. Nor was it necessary for the Panel to rule on the jurisdictional question of whether it had authority to convert the Picketing Agreement into a Board order. *Held*: Employer's application dismissed.

Coca-Cola Bottling Ltd., BCLRB No. B285/2001 – The Teamsters applied for reconsideration of BCLRB No. B210/99 wherein the original panel found the Teamsters were not entitled under Section 65(3) to picket at a particular site where Coca-Cola was making a delivery to a customer. Among other things, the Teamsters argued that the original panel incorrectly applied the third and fourth criteria in Section 65(3).

The Reconsideration Panel concluded that the focus of the third criterion in Section 65(3) (whether the work is an "integral and substantial part of the employer's operation") is on the significance of the work being performed to the employer's undertaking as a whole. Once the nature of the employer's operation is identified, the significance of the work performed by the employees to that operation can be assessed. The "integral and substantial" criteria should not be assessed by looking at a single delivery to one customer location or by looking at a particular task in isolation. The assessment should focus on the significance of the delivery of product generally, rather than the significance of delivery to the particular customer. The original panel erred when it found the work was not substantial because it was only a delivery to one customer out of 2,500 customers. Also, the inquiry should not be into whether the work is an integral and substantial part of an individual employee's duties. The original panel erred by relying on the fact that drivers, while making a delivery, spend time waiting for empty loading bays and waiting for others to unload the product. The focus should have been on whether waiting was, in fact, work. Here, waiting time was "work" because it was part of the employee's job and was paid time.

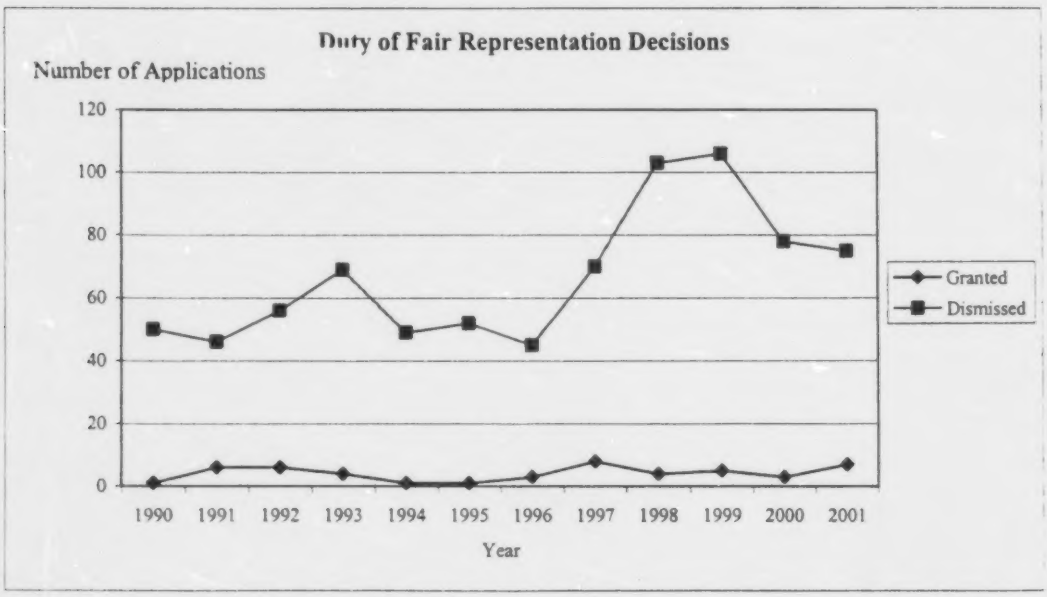
The Reconsideration Panel also revisited the analysis used to assess the fourth criterion in Section 65(3) (whether the site of picketing is a "site or place of the lawful strike or lockout"). In the past, the Board applied an "enduring connection" test to analyze the fourth criterion. That analysis is questionable because the current language of Section 65(3) has no quantitative or qualitative element in the fourth criterion. The fourth criterion was designed to establish a "but for" test; i.e., but for the strike or lockout, employees would be working there. In short, there is a right to picket where, but for the strike or lockout, the employees would work at a location, provided the work is under the control and direction of the Employer and is integral and substantial to the Employer's operation. *Held:* Union's application for reconsideration granted; original decision set aside.

Replacement Workers

Coast Mountain Bus Company Ltd. and Greater Vancouver Transportation Authority, BCLRB No. B147/2001 – Leave for reconsideration denied in BCLRB Nos. B182/2001 and B196/2001 – OPEIU, Local 378 alleged Translink breached Sections 6(3)(a) and 68 of the

Code by using replacement workers to perform the work of an employee in the bargaining unit that was on strike. At issue was the use of exempt Translink employees to empty money from ticket vending machines located at SkyTrain stations in Greater Vancouver. Local 378 relied on the fact that Translink cancelled Coast Mountain's contract to perform this work and the fact that the position of Fare Box Receipt Attendant fell within the scope of its collective agreement with Translink.

The Panel found that "the work of an employee in the bargaining unit" is not synonymous with "bargaining unit work". Although the scope of the collective agreement established that employees in Local 378's Translink unit might have performed the work in question but for the strike, it did not establish that TransLink's bargaining unit employees would be performing the work but for the strike. Employees in that unit had not previously performed the ticket vending machine work. There was no evidence of any plan employees would have removed money or arrangement by Translink to have its employees perform the work during the Coast Mountain strike. Coast Mountain from the ticket vending machines but for the strike at Coast Mountain. However, there was no basis for concluding that Translink bargaining unit employees would have performed the work but for the strikes at Translink and/or Coast Mountain. The Union argued that the words "an employer" in the opening phrase of Section 68(1) meant that any employer is prohibited from using the services of any person to perform the work of an employee in the bargaining unit that is on strike. This argument was rejected. When read in the context of Part 5 as a whole, "an employer" refers to the struck employer and not simply any employer. Otherwise, employers who are not involved in a labour dispute could be prohibited from engaging certain persons to provide the services that were provided to them by a struck employer prior to that employer's labour dispute. This would place constraints on neutral third parties and amplify the effect of a labour dispute on persons who are not involved in the dispute. *Held:* Union's application dismissed.



RIGHTS, DUTIES AND UNFAIR LABOUR PRACTICES

Duty of Fair Representation – General

Roxy Lee Long, BCLRB No. B88/2001 – Long complained under Section 12 that IWA Local 2171 breached its duty of fair representation in dealing with her termination grievance. Long did not report for a scheduled shift with her Employer, Skeena Sawmills on January 13, 2000. Instead, she called the Employer and advised of her intention to file a harassment and discrimination grievance. The Employer responded by immediately hand delivering a letter to her home instructing Long to report for work for the afternoon shift that day. The letter said the "work now, grieve later" rule applied and if Long did not report for work her employment would be terminated. Long was not home when the letter was delivered. The next day, Long was notified of a registered letter from the Employer. The registered letter contained her ROE and final cheque, both of which were dated January 14, 2000.

Long grieved her termination. The collective agreement provided that an employee who is absent without leave for a period of more than three days without just reason will forfeit seniority rights. A Union official, Malhotra, told Long that his view was that the Employer could fire her because it had given her three days to reply. The Union's view was that Long received her ROE and final cheque on January 17. Long disagreed, and told Malhotra that she received her ROE and final cheque on January 14 – the day after the Employer's initial letter.

The Union obtained a legal opinion which stated that an arbitrator would likely uphold Long's termination. However, the legal opinion accepted as a fact the Union's view that Long received her ROE and final cheque from the Employer on January 17. The legal opinion was premised, in part, on the assumption that the Employer had waited several days before terminating Long. It noted that an arbitrator would likely consider that Long had a great deal of time to consider her actions.

The Panel found that the Union's representation of Long in her termination grievance was arbitrary. Throughout its investigation the Union refused to acknowledge the considerable evidence that the Employer had terminated Long effective January 13 or 14, rather than January 17. The fact that the Union obtained a legal opinion did not provide any support for its assessment, since the legal opinion was premised on the Union's view of the facts regarding the timing of Long's termination. The Panel ordered the Union to obtain a new legal opinion, and to provide the lawyer with the evidence suggesting that Long was terminated January 13 or 14, including Long's ROE and final cheque. The Panel remained seized with respect to further remedies. *Held:* Section 12 application granted in part.

Wynn Corboy et al., BCLRB No. B252/2001 – The four complainants were terminated from their employment for their involvement in an illegal work stoppage. Their resulting grievances were later resolved during a mediation session at the Board. The complainants accepted a monetary settlement and resigned from their employment. The settlement monies were ultimately treated as taxable income. However, the complainants asserted their union, the Operating Engineers, advised them during the mediation that the money

would be "tax free". They argued the Union's advice was a crucial element in their decision to accept the settlement. The complainants argued the union breached its duty of fair representation and sought financial compensation such that their after-tax position would equal the gross amount of the settlement.

In opposing the Section 12 complaint, the Union disputed the allegation that the settlement monies were described as "tax free". It argued the monies were to be paid to the complainants "without deduction", and the complainants could then determine for themselves whether they wishes to declare the monies as income.

The Panel found that the complainants were not told during the mediation that the settlement funds were "tax free". The Board's mediator and the Union's representatives advised them that the settlement funds would be paid by the company to the union, and then disbursed by the union without deduction for income tax. This manner of payment would allow the complainants to evade paying taxes if they did not declare the income. The complainants knew when they signed the consent award and the disbursement agreement that the settlement funds were properly subject to income tax. The understanding between the complainants and the union that the union would not make the required deductions was contrary to the *Income Tax Act* and part of an "illegal" scheme to allow the complainants to evade paying taxes. The union breached its duty of fair representation by knowingly encouraging the complainants to enter into the tax evasion scheme and giving the "message" that they could elect not to declare the income. However, the complainants were not innocent parties to the illegal agreement, and should not be allowed to avoid the consequences of the settlement. Accordingly, the Panel found no remedy appropriate beyond a declaration that the union breached Section 12 of the Code. *Held:* Complainants' application granted in part but their request for further relief denied.

Nicholas James, BCLRB No. B330/2001 – James applied under Section 141 for reconsideration of BCLRB No. B59/2001, which dismissed his Section 12 complaint against the Professional Employees' Association for refusing to pursue his grievance. The grievance had alleged that the collective agreement between the Union and the University of Victoria failed to "meet or exceed" the relevant provisions of the *Employment Standards Act*, and therefore the provisions of the *Act* applied. The Union denied the grievance based on: (1) its prospect of success; and (2) its potential effect on the Union's relationship with the Employer. After James filed his Section 12 complaint, the Employment Standards Branch wrote and advised that in its opinion, certain sections of the collective agreement, considered together, failed to meet or exceed the relevant sections of the *Act*.

The original panel held that the Union did not violate Section 12. It based its decision to deny the grievance based on relevant considerations known to it at the time.

On reconsideration, the Panel reviewed the intersection of the "meet or exceed" requirement with unions' duty of fair representation under Section 12 of the Code. It noted the Employment Standards Tribunal has held that the initial jurisdiction to make the "meet or exceed" determination rests with an arbitrator, not

the Branch. As the union has control of the grievance procedure, a union member cannot insist that a grievance be taken to arbitration. Thus, a unionized employee does not have an absolute entitlement to a "neutral" ruling on whether the collective agreement meets or exceeds the requirements of the *Act*. Nonetheless, an allegation that the union has breached Section 12 in negotiating a substandard collective agreement would be a "serious matter" and therefore subject to "closer scrutiny" under the Board's Section 12 jurisprudence.

In the case at hand, the Union met its duty under Section 12. Its concern about jeopardizing its relationship with the Employer was a valid one. That concern was not determinative: if an issue is raised as to whether the collective agreement meets the statutory minimums, the union must turn its mind to that issue and make a reasoned decision on whether to proceed with the grievance, regardless of whether the parties negotiated the language in good faith. However, the Union had done so in this instance.

The Panel agreed with the original panel's suggestion that the Union revisit the grievance in light of the Branch's opinion, and consider whether that opinion offered an argument the Union may have missed. *Held:* Leave granted; James' application for reconsideration dismissed.

PRACTICE AND PROCEDURE
EVIDENCE

Admissibility of Settlement Discussions

Wynn Corboy et al., BCLRB No. B252/2001 – The four complainants were terminated from their employment for their involvement in an illegal work stoppage. Their resulting grievances were later resolved during a mediation session at the Board. The complainants accepted a monetary settlement and resigned from their employment. The settlement monies were ultimately treated as taxable income. However, the complainants asserted their union, the Operating Engineers, advised them during the mediation that the money would be "tax free". They say the union's advice was a crucial element in their decision to accept the settlement. The complainants argued the union breached its duty of fair representation and sought financial compensation such that their after-tax position would equal the gross amount of the settlement.

In opposing the Section 12 complaint, the union argued that evidence of what occurred during the mediation was not admissible. It argued a Board mediator proposed this method of payment.

The Panel held that the Board's general policy is that parties are not permitted to call evidence of settlement discussions with mediators or other Board officers. However, in this case there were compelling reasons to make an exception and allow such evidence to be called. There was a reasonable basis for believing that a settlement was reached through the auspices of the Board which was illegal or contrary to public policy. Concern over the integrity of the Board's processes must outweigh the usual need to maintain confidentiality around settlement discussions. *Held*: Evidence admitted.

Adverse Inferences

Barbara-Jean Steele, BCLRB No. B77/2001 – In the course of hearing Steele's Section 12 complaint against the IUOE, a preliminary issue arose about

whether the Panel should draw an adverse inference as a result of the parties' failure to call Union representatives, Bennett and Bitz, to testify.

Steele argued that an adverse inference should be drawn against the Union for its failure to call Bennett and Bitz. She argued that once the Union put Bennett's "will say" statement to Steele during cross-examination, the Union was obliged to call Bennett. The Union argued that an adverse inference should be drawn against Steele because she did not call Bennett to testify even though she had summonsed Bennett.

The Panel stated the general rule is that where a party fails to adduce evidence, either through witnesses or by documents, which it would naturally be expected to bring before the trier-of-fact, an unfavourable inference may be drawn against that party. The inference which may be drawn is that the evidence, if called, would have been injurious to, or at least not supportive of, that party's case.

The Panel disagreed with the Union's argument that the rule is restricted in application to the party who has the burden of proof. An adverse inference may be drawn against a responding party once the evidentiary burden has shifted.

The Panel noted that an adverse inference should not be drawn against a party for its failure to produce a witness that was "equally available" to both parties. However, the Panel disagreed that Bennett was equally available to Steele. The word "available" is not necessarily restricted to mean that either party has a like opportunity to subpoena the witness. If the relationship of the witness to a party is such that the witness would reasonably be expected to testify in favour of that party and against the other, such a witness is not equally available.

The Panel found that any adverse inference to be drawn in this case would be drawn against the Union. However, the Panel could not draw that inference until the Panel was satisfied that Steele had adduced evidence sufficient to establish a *prima facie* breach of Section 12, at which time the Panel would consider the type and nature of evidence that was not adduced, together with the evidence that was adduced, in order to determine whether an adverse inference should be drawn. The Panel was willing to entertain an application from the Union to re-open its case to call Bennett and/or Bitz as witnesses.

Costs

Emral Enterprises Ltd., BCLRB No. B291/2001 – Application for reconsideration dismissed in BCLRB No. B5/2002 – The Panel granted the companies' application to cancel ILWU, Local 400's certification and collective agreement. However, the Panel found that the companies' principal, without deliberately misleading the Board, had by his continuing carelessness in failing to ascertain the true state of his corporate affairs induced the ILWU to undertake lengthy and ultimately unnecessary proceedings before the Board. Had the principal taken the trouble to properly inform himself of his own affairs in the first place, ILWU would have been saved the cost of two sets of hearings.

While there was no breach of the Code as is normally required under the Board's jurisprudence for an award of costs, the Panel found that, in all the circumstances, there was an exceptional and compelling

case for a make whole order under Section 134(1)(a) of the Code as a condition of the decision. The Panel therefore ordered as a condition of the decision that the companies reimburse ILWU for its reasonable legal costs, disbursements and related expenses incurred in certain specified hearings and applications. *Held:* Companies' application allowed subject to the orders and conditions set out in the decision.

Dismissal of Case

Carl Persall, BCLRB No. B410/2001 – Persall filed a complaint under Section 10 of the Code against Teamsters Locals 155 and 213. The complaint against Local 213 went to a hearing. Persall left abruptly in the midst of those proceedings and refused to return. The original panel hearing the complaint continued with the hearing in his absence, and eventually issued a decision dismissing his complaint against Local 213. The complaint against Local 155 remained out-standing. The original panel directed the parties to provide submissions on how to proceed in these circumstances and stipulated that if Persall did not provide such a submission, his complaint would be dismissed. The original panel considered this stipulation necessary because of Persall's continuing course of misconduct and defiance of Board directions in the proceedings. In view of subsequent circumstances, including a civil action initiated by Persall against the member of the panel and the Associate Chair (Adjudication), the Chair of the Board assigned this matter to himself for adjudication.

The Chair decided that Persall's complaint against Local 155 should be dismissed. Rather than provide a submission on how to proceed, Persall instead wrote a number of letters to the Board filled with offensive and derogatory epithets directed at the participants in the proceedings. He persisted in that kind of writing despite warnings from the Board that such letters would be disregarded. The Chair dismissed his complaint both on the basis that he had failed to meet the requirement to provide a submission, and on the broader basis that the Board has a discretion not to inquire into a complaint under Section 14(3) of the Code. This discretion is not to be exercised lightly. However, Persall had intentionally and persistently frustrated the Board's attempts to inquire into his complaint and had instead subverted the Board's processes into a venue for heaping insult and abuse on others. This was a waste of Board resources and contrary to the purposes of the Code. *Held:* Complaint dismissed.

Estoppel

Corporation of the District of Maple Ridge, BCLRB No. B209/2001 – The District applied for reconsideration of an original decision which dismissed the District's objection that CUPE, Local 622 was estopped from seeking a declaration that RG Arenas was a successor employer to the District.

The Union represented a bargaining unit of the District, including approximately 13 employees who worked at an ice rink. In 1996, the District announced that it would replace the ice rink with a new multiple ice sheet arena that would be owned by the District, but built and operated for at least 30 years by RG Arenas. The Union and the District formed a sub-committee to negotiate what employment options would be made available to the 13 displaced employees. Initially, the Union did not think of the issue in terms of successorship. However,

after some negotiations had taken place, the Union received advice which caused it to file a successorship application vis-à-vis the new arena project. The original panel rejected the District's argument of estoppel. It found that the Union had not made an unequivocal representation that it would not seek successorship and that the District had not relied to its detriment on any such representation.

Noting that both of these were findings of fact, the Reconsideration Panel held that the District had not met the test of demonstrating that the original panel had made a "palpable and overriding error" in its factual determinations. Silence may well be found to be a representation where the context of discussions between parties requires them to disclose their potential positions and options. The party which hangs back, hoping to get more through a subsequent application by "lying in the weeds", will be estopped. However, a determination that a party is estopped cannot rest on a purely subjective assessment of what is fair and just in the particular circumstances. A party seeking an estoppel declaration must demonstrate that it reasonably relied on an unequivocal representation made by the party against whom the estoppel application is brought. The Panel noted that, rather than relying on unspoken assumptions, a more productive labour relations climate depends on full and frank discussions with clear statements as to "what is on the table". *Held*: District's application for reconsideration dismissed.

Interim Orders

Greater Vancouver Transit Authority, BCLRB No. B87/2001 – Three unions sought an interim order while their "true employer" application was pending. The true employer application – which was brought after Translink awarded Bonny's Taxi a route previously serviced by Coast Mountain Bus Company – alleged that Translink, not Coast Mountain, was the true employer.

The Unions sought an interim order prohibiting Translink from issuing Requests for Proposals for contracted services, contracting out transit services, instituting technological changes which would affect Coast Mountain employees, instigating layoffs of Coast Mountain employees or requiring Coast Mountain to take any such actions. In the alternative, the Unions requested an interim order requiring Translink to comply with Coast Mountain's collective agreement and Code obligations pending resolution of the true employer application.

The Panel noted that Translink's ability to issue Requests for Proposals would not be restricted even if the Unions' true employer application was successful. While Translink's ability to contract out could ultimately be restricted by the true employer application, the Unions had not demonstrated that any further contracting out was likely to occur before the Board issued its decision on the merits of the true employer application. As well, the Board can make a true employer declaration effective from a date before the declaration is issued. Thus, if the Board ultimately declared Translink the true employer, it could make the declaration effective from, for example, the date of the Unions' application. The Unions could then seek relief for any contracting out in the appropriate forum. Accordingly, the Unions would not suffer irreparable harm from contracting out absent an interim order.

Dealing with the Unions' alternative request – that Translink be ordered to comply with Coast Mountain's collective agreement and Code obligations – the Panel held that this would effectively treat Translink as the true employer until the Unions' true employer application was decided. That is not a proper purpose for an interim order. An interim order should seek to preserve or restore the *status quo*, not grant the entire relief sought by the applicant pending adjudication on the merits. *Held:* Unions' application for an interim order dismissed.

Health Employers Association of British Columbia, BCLRB No. B125/2001 – HEABC applied under Section 141 of the Code for reconsideration of BCLRB No. B118/2001. The original panel imposed interim essential service level designations for a number of facilities in the health industry under Section 133(5), pending a designation under Part 6 of the Code.

HEABC argued the original panel erred in refusing to hear what HEABC characterized as "crucial evidence on the outstanding issues" and that it was unfairly limited to a two hour oral submission before the original panel. It asserted the original panel had failed to comply with Section 126 which directs the Board to "give full opportunity to parties to a proceeding to present evidence and make submissions". Noting that the application of the principles of a fair hearing is dependent on the nature of the proceeding in question, the Reconsideration Panel found the original panel had not erred. Interim orders, by their nature, do not require a full adjudication of the matter. Moreover, Section 133(5) of the Code, which requires only that parties be "given an opportunity to be heard" prior to issuance of an interim order or designation, is an express qualification of Section 126(1). *Held*: HEABC's application for reconsideration dismissed.

Prima Facie Case

Canem Systems Ltd. and Harbour Electric Ltd., BCLRB No. B473/2001 – IBEW Local 213 filed an unfair labour practice complaint, a successorship application and a common employer application against two companies, Canem and Harbour. Canem and Harbour conceded that a successorship occurred in January 2000 but otherwise argued that Local 213's applications did not raise a *prima facie* case.

Under Section 133(4) of the Code, the Board may dismiss any application or complaint for failing to establish a *prima facie* case. The standard to be applied for determining whether a *prima facie* case has been established is set out in *Terry Norris*. The standard depends both on the nature of the application and the applicant's ability to acquire proof of the facts it must establish to support its application. Consequently, in cases such as successorship or common employer applications, the Board is willing to accept proof on the basis of inference from circumstantial evidence. Circumstantial evidence may also be relied upon in establishing an unfair labour practice complaint under Section 6(3)(a) since it is frequently impossible for a union to adduce direct evidence of an employer's motivation. The Board may defer making a *prima facie* determination where there is reason to believe that a *prima facie* case will likely be established during the course of the hearing.

With respect to this case, the Panel found that Local 213 had established a *prima facie* case on a low threshold, or

alternatively that this was a case where a *prima facie* case would likely be established during the hearing on the merits. *Held: Prima facie* standard met; matters set down for hearing.

Production of Documents

Gurchan Garcha et al., BCLRB No. B92/2001 – The Complainants applied for an order for pre-hearing production of documents, in the context of their Section 12 complaint against IWA Local 1-3567. The Complainants sought an order that Local 1-3567 produce all relevant documents in its possession or control, and in the possession of IWA Local 2171 and IWA-Canada. They also sought an order that Doman Forest Products produce all relevant documents in its possession or control, and in the possession of FIR. The Complainants argued that the parties to the Section 12 complaint (Local 1-3567 and Doman) could be ordered to produce documents in the possession of their "agents". Alternatively, if Local 1-3567 and Doman were not required to produce documents in the possession of Local 2171, IWA-Canada and FIR, then the Complainants sought orders for production against those latter entities directly.

The Panel rejected the Complainants' argument that an order that a party produce all relevant documents in its "possession or control" includes documents in the possession of its "agents". A party is often not "in control" of its agent's documents. "Control" means an enforceable right to obtain documents from a person who has possession. Accordingly, when the Board orders a party to produce documents in its "possession or control", that will encompass documents in the possession of the party's agent only if they are in the party's control.

Dealing with the Complainants' alternative request, the Panel held that the Board has no jurisdiction to make an order for pre-hearing production of documents against a non-party. Accordingly, the Panel dismissed the application for an order against FIR, IWA-Canada and Local 2171. If the Complainants seek documents from these entities, the proper course is to request summons compelling their representatives to attend as witnesses and bring with them relevant documents in their control, pursuant to Section 140(a) and Rule 18. *Held:* Complainant's application for pre-hearing production of documents granted in part.

Greater Vancouver Transit Authority, BCLRB No. B341/2001 – Coast Mountain Bus Company applied for reconsideration of an interim order requiring it to produce copies of specified documents to counsel for its Unions. The documents arose from a Coast Mountain Board of Directors' meeting at which the company's collective bargaining strategy was developed. Coast Mountain argued that they were not relevant to the issues in the proceeding before the original panel (a "true employer" application by the Unions), and that, even if they were relevant, the documents should not be disclosed because they were confidential documents relating to collective bargaining. The Unions agreed that the documents were confidential in nature and that typically disclosure of such bargaining information would be contrary to the purposes of the Code. However, they argued Coast Mountain waived confidentiality of the documents when it asked one of its witnesses to testify about the content and details of the documents in her direct evidence.

The Reconsideration Panel agreed with both parties that the Board must guard the confidentiality of bargaining information in keeping with the purposes of the Code. However, the importance of keeping bargaining information confidential does not create an absolute prohibition on disclosure. The Board is also obliged to provide parties a fair hearing, including ensuring that a party has access to documents that are relevant or potentially relevant to the issues. Therefore, the Reconsideration Panel agreed with the original panel that the Unions cannot be denied access to the documents. However, rather than allow Unions' counsel to review the documents to determine their relevance under certain undertakings, the Reconsideration Panel concluded that the chair of the original panel should review the documents, consider their potential relevance and determine which portions, if any, should be produced to the Unions. *Held:* Coast Mountain's application for reconsideration allowed in part; documents to be produced to the chair of the original panel, rather than to Unions' counsel, to determine which portions, if any, should be produced to the Unions.

Reasonable Apprehension of Bias

Pacific Opera Victoria Association, BCLRB No. B215/2001 – The Employer alleged reasonable apprehension of bias on the part of Vice-Chair O'Brien. Prior to her appointment, Vice-Chair O'Brien was as an officer of the CEP while counsel for the Employer represented Pacific Press. The Employer alleged that this prior adversarial relationship between O'Brien and its counsel gave rise to a reasonable apprehension of bias because its counsel had previously cross-examined O'Brien about her conduct and credibility, and had successfully sought costs against CEP on the basis of O'Brien's conduct.

The Panel found that after a suitable period of time past professional or business relationships between a Vice-Chair and a party or its counsel will not be a ground for disqualification, provided those past relationships do not extend to the matter in issue before the decision maker. Also, in light of the oath of office taken by members and Vice-Chairs of the Board, the presumption of judicial impartiality applies. The Employer's allegations were insufficient to rebut the presumption in this case. In the labour relations context the mere fact that individuals have interacted in their prior professional lives either as adversaries or allies cannot in and of itself give rise to a reasonable apprehension of bias. From a labour relations perspective, the very nature of the union-employer relationship is adversarial and not infrequently acrimonious. Cross-examination and awards of costs are not outside normal labour arbitration practice. The Panel did not find that a reasonable person, knowledgeable and informed about the nature of labour relations and labour arbitration in particular, would reasonably infer from the Employer's allegations, that O'Brien might bear counsel a lasting grudge. *Held:* Employer's preliminary objection to Vice-Chair O'Brien dismissed.

Ben Speckling, BCLRB No. B332/2001 – Speckling made a complaint under Section 12 of the Code against CEP Local 76, concerning his dismissal from employment with Pacifica Papers. In the course of that complaint, Speckling made a number of preliminary arguments, including allegations that the Board is subject to "institutional bias" – a reasonable apprehension of bias in a substantial

number of cases – with respect to Section 12 complainants.

Among other things, Speckling argued it is common for Vice-Chairs of the Board to become arbitrators after leaving the Board, and current Vice-Chairs may therefore have aspirations to become arbitrators. Arbitrators lack security of tenure, and are dependent on being selected by unions and employers. He argued that in a situation such as a Section 12 complaint, where the employee complainant is on one side and the union and the employer are on the other, a reasonable apprehension of bias is thereby created.

The Panel rejected this argument. It noted that parties could not predict the type of decision they would receive from an arbitrator based on that individual's decisions in Section 12 complaints. Nor was it reasonable to presume that unions and employers would select arbitrators based upon such petty motives as a desire to penalize adjudicators who had granted Section 12 complaints. Further, a reasonable and informed person would be aware of Vice-Chairs' oaths of impartiality, and the traditions of impartiality and integrity at the Board. As well, there was compelling positive evidence that Vice-Chairs do perform their duties impartially: the vast majority of the Board's significant decisions, issued by panels of adjudicators with varying backgrounds and aspirations in the labour relations community, are nonetheless unanimous. Finally, the possibility that Vice-Chairs may go on to careers in some aspect of labour relations after leaving the Board is inevitable for persons with labour relations expertise. The requirement of labour relations expertise is mandated by the scheme of the Code. *Held:* Speckling's preliminary arguments and objections dismissed.

Removal of Counsel

Non-Construction Affiliated Trade Unions, BCLRB No. B228/2001 – OTEU alleged that counsel for TWU was in a conflict of interest because he had represented OTEU in the past. OTEU sought an order barring counsel and any member of his firm from representing TWU in the matter currently before the Board.

The Panel stated that the Board is not, nor should it be, the arbiter of legal ethics. The Panel noted that the Board's jurisdiction to deal with applications for the removal of counsel on the basis of conflict of interest was not challenged. Even if the Board has jurisdiction, this was not a case that called for the Board to intervene to ensure a fair hearing. Delay or waiver may bar an application for the removal of counsel for a conflict of interest. OTEU waited more than a year to raise its allegation of conflict of interest and was thereby deemed to have waived any such claim. In any event, OTEU's application lacked evidence of counsel's earlier dealings with OTEU and evidence of any link between those dealings and the current matter. Also, any information obtained from the previous retainers was three or four years out of date and, therefore, less relevant than it may have been in the past. *Held:* OTEU's preliminary objection dismissed.

Standing

Various Employers -and- GWU, Local 1 et al., BCLRB No. B42/2001 – This decision concerned the issue of the standing of the B.C. Yukon Building Trades Council with respect to an

application by CLAC under Section 37 to be declared the successor union to GWU. The Council and the Operating Engineers, Local 115 opposed the Section 37 application, alleging that GWU members had not been given sufficient information regarding the transfer and had been materially misled by GWU. The Council was given standing to participate as the representative of five individuals who were allegedly members of GWU at the time of the transfer and who opposed the Section 37 application. CLAC argued that none of the five were currently in a bargaining unit for which the bargaining agent would change if CLAC is successful in its Section 37 application, and therefore it was appropriate to revisit the original grant of standing in light of the changed circumstances.

The Council argued that CLAC was seeking to have the original decision reconsidered, but it was well outside the time limits for reconsideration; in any event reconsideration would be beyond the jurisdiction of the original panel. It further asserted that since the original standing decision was an interim decision, the test for leave for reconsideration was very high.

The Panel found that CLAC's application was not, properly characterized, an attempt to reconsider the earlier standing ruling. Section 140(n) of the Code, which authorizes the Board to add a party, implicitly authorizes the Board to delete a party where appropriate. Further, the granting of standing is not dispositive of a legal issue and does not confer any remedy; therefore it is not a final decision. Standing is predicated on a certain state of facts. Accordingly, it may be revisited if the facts upon which it was based have changed.

The Panel found that, while employment in a bargaining unit represented by GWU at the time of the transfer was necessary to establish a basis upon which to be granted interested party status, it was not sufficient, in and of itself, to establish a right to ongoing participation in the proceeding. The five employees were no longer employed in a bargaining unit for which there may be a change in the bargaining agent if CLAC's application succeeds. Accordingly, they would not be affected by the outcome of the Section 37 proceeding. Their direct and legally material interest in which union would represent them ceased when they were no longer in a bargaining unit represented by GWU. The Panel invited submissions regarding the application of the *Armscon* exception to the five individuals.

Various Employers, BCLRB No. B48/2001 – Leave for reconsideration denied BCLRB No. B113/2001 – In a previous decision, BCLRB No. B42/2001, the Board found five individuals no longer had a sufficient continuing interest to participate in the proceeding as interested parties and requested submissions about whether they should be granted standing pursuant to the principles in *Armscon Enterprises*, BCLRB No. B98/94.

On behalf of the five individuals, the B.C. and Yukon Building Trades Council argued that GWU and CLAC are not adversarial and that important evidence would not be brought to the attention of the Board without the five individuals participating in the proceedings.

CLAC argued application of the *Armscon* principles should be restricted to circumstances where affected persons cannot be identified, such as in cases

involving the build-up principle. CLAC said a transfer of jurisdiction under Section 37 is not intended to be an adversarial process and that it is inappropriate for the Board to seek-out adversaries except in exceptional cases.

The Panel found that the application of *Armscon* is not restricted in the manner CLAC asserted and that *Armscon* had been applied in cases where there was no issue about the rights of unidentified persons.

The Panel granted standing to three of the five individuals. The GWU had been defunct for some time and was unlikely to play any role in the proceedings. While CLAC possessed only limited direct knowledge of the events surrounding the transfer, three of the five individuals were represented by the GWU at the time of the transfer and purportedly had direct knowledge of the alleged improprieties in the transfer process. It was unlikely this information would be brought forward and tested except by way of an adversarial process and the GWU was not in an adversarial position *vis-à-vis* CLAC. *Held:* Standing granted to three individuals.

JURISDICTION OF THE BOARD

The British Columbia Corps of Commissionaires, BCLRB No. B277/2001 – The Employer applied for reconsideration of BCLRB No. B184/2001 wherein the original panel certified PSAC for a unit of employees working at the Department of Fisheries and Oceans and at the Burnaby/Fraser Tax Services office. Among other things, the Employer challenged the original panel's conclusion that radio operators working at the Department of Fisheries are subject to provincial jurisdiction.

The Reconsideration Panel found that the question of whether an undertaking is provincial or federal is a question of general law, and is subject to the correctness test upon review. The proper inquiry focuses on whether the work of the employees in question is a vital, essential or integral part of a core federal undertaking. The original panel erred when it found the radio operators were not integral to the federal undertaking despite the fact that their work is critical to the safety of field officers who perform the core function of the undertaking. Work performed by employees and the measures taken to ensure their safety when performing that work are inextricably intertwined. Also, constitutional jurisdiction is not contingent on there being federal regulations governing the employees' activities. The radio operators are subject to federal jurisdiction. Removing these employees from the proposed bargaining unit would substantially alter its scope and, as a result, the Union's certification application was dismissed. *Held:* Employer's application for reconsideration allowed, original decision set aside, and the Union's certification application dismissed.

R.C. Purdy Chocolates Ltd. [Certain Employees of], BCLRB No. B477/2001 – The Employer and Certain Employees applied for reconsideration of the Original Panel's decision to decline to order a time bar, damages or costs against the CEP, Local 2000. This decision dealt only with the time bar issue.

The Employer's and Certain Employees' argument that the original panel erred in failing to impose a time bar depended on a finding that the Board has jurisdiction to impose a time bar in the

circumstances. Sections 30, 133 and 134 were considered as possible sources of jurisdiction. Section 30, which allows the Board to impose a time bar where repeated applications for certification are made, was found not to apply in the circumstances. Section 133 provides a remedial jurisdiction where there has been a breach of the Code, the regulations or a collective agreement. The Panel rejected the argument that alleged breaches of Section 2 or 4 could give rise to the Board's remedial powers under Section 133. It also rejected the argument that the Board's Section 133 powers were engaged by the Union's alleged contravention of Section 22(3) and Regulations 2 and 3 in submitting forged membership cards. Finally, with respect to Section 134, the panel held that the Board cannot use its general power to impose conditions and undertakings to impose a time bar in circumstances outside those where the Board has been given an express statutory mandate to so.

While it might be desirable from a labour relations perspective for the Board to have a discretionary jurisdiction to impose remedial measures absent a contravention (i.e., for abuse of its processes), on the plain language of the Code, the Board does not have such jurisdiction. Accordingly, the Panel could not impose a time bar as a remedial measure in the circumstances of this case. *Held:* Leave and reconsideration with respect to the time bar issue only denied.

IV. JUDICIAL REVIEW

JUDICIAL REVIEW SUMMARIES

Arbitrator's Jurisdiction

Elkview Coal* v. *United Steelworkers et al, 2001 BCCA 488 – On appeal by the Employer, the Court of Appeal overturned the B.C. Supreme Court and quashed the decision of Arbitrator Dalton Larson and the Board's Section 99 decisions which had upheld it.

Arbitrator Larson had decided he had jurisdiction to decide the substantive issue raised by the Union's grievance: whether a medical insurance plan was void for contravening the *Human Rights Code*, because it defined "common law spouse" as a person in a relationship between two people of the opposite sex. Applying *Weber* v. *Ontario Hydro*, [1995] 2 S.C.R. 929, the Court held that this was not an issue "arising under the collective agreement" so as to fall within the jurisdiction of the arbitrator. The Court held that the Union's substantive dispute was with the insurer, and arose from the terms of the insurance policy. It did not arise from the collective agreement, which only obliged the Employer to pay premiums. In view of that collective agreement language, the Court held that there could be no implied obligation on the Employer to ensure the lawfulness of the insurance policy.

The Court also held that the issue before the arbitrator was one of jurisdiction, not merely arbitrability, and the applicable standard of review was correctness. *Held:* Appeal allowed; petition for judicial review granted. Arbitrator's decision set aside.

Dispute Resolution Mechanism

United Steelworkers of America, Local 7884 v. Fording Coal Ltd., The British Columbia Labour Relations Board, and Dalton Larson, (oral decision, October 15, 2001) Vancouver Registry No. L011791 (B.C.S.C.) – USWA Local 7884 applied for judicial review of the Board's decisions in BCLRB Nos. B45/99 and B90/2000, which had rejected its application under Section 99 of the Code. The Board had held that the process agreed to by the Union and the Employer for adjudicating pension plan disputes, by which the Employer would appoint the Chair of the Pension Plan Committee, did not violate the Code (although it remained open to the Union to challenge a particular appointment when it was made).

In an oral decision, the B.C. Supreme Court rejected the Union's application for judicial review. Pitfield J. held that the question of whether arbitration procedure conforms to law is clearly within the Board's jurisdiction, and the Board's decision was not patently unreasonable. Nothing in the common law or statute law prohibited the parties from agreeing about how their disputes would be resolved.

Replacement Workers

Office and Professional Employees' International Union, Local 378 v. Labour Relations Board of British Columbia and British Columbia Automobile Association, 2001 BCCA 433 – This case involved an appeal of a decision by Fraser J., 2000 BCSC 0932, in which the Supreme Court set aside two decisions of the Board: BCLRB Nos. B94/99 and B277/99. The Court of Appeal held that Fraser J. erred in concluding the Board's interpretation of Section 68(1)(b) of the Code was patently unreasonable.

The Court held that the trial judge approached the question before him incorrectly. First, he misread the thrust of the legislative provision when he concluded that Section 68 was intended to prohibit the use of replacement workers. Section 68 is a compromise provision and not a blanket prohibition. Moreover, the Board properly recognized that one the purposes of Section 68 was to protect the integrity and viability of the bargaining unit. Viewed as a whole, the thrust of Section 68(1)(b) is, as held by the Board, to preserve the pre-strike/lockout makeup of the workplace.

Second, the trial judge erred when he gave overriding importance to the amount of time spent by managers working at each location. The Board properly concluded that the actual time spent at any location was merely one of a number of relevant factors to be considered. Where a Code provision leaves room for construction, it is appropriate that the Board be free to interpret the provision in accordance with labour relations policy considerations. The Board has a broad oversight mandate and is expressly charged with policy responsibility and development. The Legislature has recognized that the Board is the body best equipped to resolve ambiguities and fill voids in the legislative language of the Code in a way that makes sense in a given factual context, in the context of the Code as a whole, and in the overall field of provincial labour relations. The Board's interpretation of Section 68 was not patently unreasonable, but rather sensibly addressed the policy concerns underlying the Code, considered the language of Section 68 contextually, and injected a measure of labour relations

judgment into a question within its exclusive jurisdiction. *Held*: Appeal allowed. Supreme Court judgment overturned; Board decision BCLRB Nos. B94/99 and B277/99 restored.

Duty of Fair Representation

Callow* v. *Labour Relations Board of British Columbia and West Vancouver Teachers' Association and The Board of School Trustees of School District No. 45 (West Vancouver), 2001 BCCA 72 – The appeal was from a judgment of the B.C. Supreme Court (per Mr. Justice Sigurdson) dated October 7, 1999 dismissing Callow's petition for judicial review of the Board's decisions BCLRB Nos. B50/98 and B37/99. The Board's decisions dismissed Callow's complaint that the Association had breached its duty of fair representation under Section 12 of the Code. In an oral decision, the Court held Callow had not established grounds to overturn the Supreme Court's decision. *Held:* Callow's appeal dismissed.

David Askey* v. *Ambulance Paramedics of British Columbia Canadian Union of Public Employees, Local 873 (April 6, 2001), Vancouver Registry No. L003343 (B.C.S.C.) – Askey sought judicial review of BCLRB Nos. B337/2000 and B459/2000 wherein the Board dismissed Askey's Section 12 complaint against CUPE and denied Askey's application for reconsideration. Askey's long-term disability benefits were terminated by Manulife. At arbitration the Arbitrator found that he did not have jurisdiction to hear a dispute about LTD benefit termination because the Employer was only liable for providing a specific level of LTD coverage. Later CUPE argued that the Employer had failed to provide the level of coverage that it was obligated to provide. The Arbitrator found the Employer had not breached the collective agreement in this regard.

In his Section 12 complaint Askey argued that an earlier decision of the British Columbia Supreme Court had found that his LTD benefits dispute must be heard at arbitration. Askey said that CUPE had failed to take the dispute back to arbitration despite that ruling of the Court. Askey also alleged that CUPE failed to submit to the Arbitrator cases wherein other arbitrators had decided LTD disputes in favour of employees. He also said that CUPE should have argued that a Benefits Manual obligated the Employer to pay him benefits when the LTD carrier ceased to do so. The Section 12 panel dismissed Askey's complaint because it did not disclose an apparent contravention of Section 12. His application for reconsideration was denied.

On judicial review, Askey made the same arguments that he raised in his Section 12 complaint. He sought past wages, benefits and damages. The Court held the appropriate standard of review was patent unreasonableness. The Board's decisions were not patently unreasonable and the petition was dismissed. *Held*: Askey's petition dismissed.

Aujla v. British Columbia Labour Relations Board, Industrial Wood and Allied Workers of Canada, Local 1-3567 and International Forest Products and Sauder Industries Limited, 2001 BCCA 611 – The Court of Appeal gave an oral ruling upholding the Supreme Court's judgment in *Aujla v. B.C. (Labour Relations Board) et al.* [2000] BCJ No. 2731. The Supreme Court had held the

Board did not act in a patently unreasonable manner when it dismissed the Appellant's Section 12 complaint without deciding the merits of his grievance.

The Supreme Court had stated that the merits of a grievance "will usually be irrelevant" to a Section 12 complaint. In the Court of Appeal's view, that statement somewhat overstated the principle. Considering whether the union acted reasonably will require some reference to the factual context of the grievance. To what extent the merits of the grievance are relevant will depend on the circumstances of the particular case. *Held:* Aujla's appeal dismissed.

Essential Services Interim Designations

Health Employers' Association of British Columbia* v. *Labour Relations Board of British Columbia, Nurses Bargaining Association, Paramedical Bargaining Association, Facilities Bargaining Association, Community Bargaining Association (oral decision, April 3, 2001), Vancouver Registry No. L010876 (B.C.S.C.) – HEABC applied for a stay, pending judicial review on the merits, of the Board's decision designating interim essential services levels: BCLRB No. B118/2001 (application for reconsideration dismissed, BCLRB No. B125/2001). The Court dismissed HEABC's stay application. The test for a stay requires consideration of three elements: (i) is there a serious question (i.e., raised by the merits of the judicial review application); (ii) irreparable harm; and (iii) the balance of convenience. The Court found none of these elements were met.

The Court rejected the argument that less deference should be given to a decision of the Board where it relates to health care. The issues to be determined concerned staffing levels and the provision of services in the context of essential service designations. The Board's expertise in this area developed over the past two and a half decades was evident.

With respect to the merits of the judicial review application, the Court found the Board's interim order was not unclear. It also rejected HEABC's argument that the interim order imposed 1998 staffing levels. Rather, it used those levels as a base, and allowed employers to arrange for further staff where necessary. The Court also rejected the argument that the Board breached its statutory duty by declining to hear evidence. There are a number of circumstances where the Board makes decisions based on the parties' submissions rather than evidence. As well, section 133(5) allows the Board to make interim orders or designations after giving each party an "opportunity to be heard". That was what the Board did in this case.

The Court also found that HEABC had not established irreparable harm, as the Board's interim order allowed employers to call in more staff where necessary. The Board's order required that in the event of a dispute over whether extra staff was necessary, the unions were to provide the staff and complain to the Board later. *Held:* HEABC's application dismissed.

Non-Judicial Review

Carl Persall* v. *Laura Parkinson, Mike Evans, Keith Bennett, Frances Watters, Gary Worth, Don McGill, Edward Norman, Thomas Milne, The Estate of Edward Norman, Catherine McCreary, Linda Dennis, Jack Vlahovic, Sheila Hogan, Ujjal Dosanjh, Don Doerksen,

Andrew Petter (oral decision, April 23, 2001), Chilliwack Registry No. S0011187 (B.C.S.C.) – Persall brought a civil action against several defendants including the Associate Chair of the Board's Adjudication Division and the Board panel members who adjudicated Persall's complaint against two unions. The statement of claim alleged, among other things, that the defendants had committed criminal offences and engaged in fraudulent misrepresentation, intimidation and conspiracy. The claim also alleged that the Board's panel members refused to permit Persall to call certain witnesses, restricted cross examination and allowed unauthorized persons to be present at the hearing.

The Board defendants applied pursuant to Rule 19(24) of the Rules of Court to have the action dismissed on the grounds it disclosed no reasonable claim against them. Assuming for purposes of the application that the facts alleged in Persall's statement of claim were true, the Court dismissed the action against the Board defendants on two grounds. First, the statement of claim failed to identify the particular defendants against whom claims were made and failed to state the material facts upon which the claims were based. Second, the Court found that Persall's claims against the panel members and against the Associate Chair arose out of their alleged conduct during the course of the management and hearing of Persall's complaints to the Board. In these circumstances, Section 123 of the *Code* and Section 12 of the *Inquiry Act* gave the Board members the same immunity from suit as by law is given to a judge of the Supreme Court. Therefore, the Board members have absolute immunity from civil actions of this nature.

APPLICATIONS FOR JUDICIAL REVIEW WHICH WERE HEARD BY THE COURT IN 2001 AND FOR WHICH DECISIONS ARE PENDING:

1. *Inderjit Atwal et al.* v. *Labour Relations Board of British Columbia* – Judicial review of BCLRB Nos. B315/2000 and B249/2000 (Vancouver Registry No. L003212). Matter heard December 17 and 18, 2001. Subject matter: Section 12 complaint.

2. *United Association of Journey-men and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 170* v. *Bargaining Council of British Columbia Trades Unions, Construction Labour Relations Association of B.C., British Columbia Labour Relations Board, Mediator Brian Foley and Attorney General of British Columbia* – Judicial review of BCLRB Nos. B244/2001 and B269/2001 (Vancouver Registry No. L011809). Matter heard December 17 and 18, 2001. Subject matter: construction industry collective bargaining.

APPLICATIONS FOR JUDICIAL REVIEW OR APPEALS FILED IN 2001 AND NOT YET HEARD BY THE COURT:

1. *Pacific Press, a Division of Southam Inc.* v. *Graphic Communications International, Local 25-C and the British Columbia Labour Relations Board* – Appeal by the Union to the B.C.C.A. from the decision of the B.C.S.C. pronounced July 12, 2000 (Vancouver Registry No. CA 027535). Matter to be heard May 7, 2002.

Subject matter: union official immunity from discipline.

2. *Greater Vancouver Transit Authority* v. *National Automobile, Aerospace, Transportation and General Workers Union of Canada, Local 111; Office and Professional Employees' International Union, Local 378; Canadian Union of Public Employees, Local 4500* – Judicial review of BCLRB No. B8/2001 (Vancouver Registry No. L010838). Hearing dates not set. Subject matter: true employer application.

3. *Dan Atkinson, Trevor Towell and Rob White* v. *Christian Labour Association of Canada, Local No. 66 (Transport, Construction and General Employees' Association), Northwest Waste Systems Inc. and Labour Relations Board of British Columbia* – Judicial review of BCLRB No. B114/2001 (Vancouver Registry No. L014468). Matter heard in part December 5, 2001; hearing to be completed January 3, 2002. Subject matter: Section 12 complaint.

4. *Bernardus J. Speckling* v. *Labour Relations Board of British Columbia, Communications, Energy and Paperworkers' Union of Canada, Local 76, and Norske Skog Canada Limited* – Judicial review of BCLRB Nos. B143/2000, B345/2000, B58/2001, B353/2001 and B379/2001 (Vancouver Registry No. L013283). Hearing dates not set. Subject matter: Section 12 complaint.

5. *National Automobile, Aerospace, Transportation and General Workers Union of Canada, (CAW-Canada), Local 3000* v. *British Columbia Labour Relations Board, Certain Employees of White Spot Limited and White Sport Limited* – Judicial review of BCLRB Nos. B336/2001 and B437/2001 (Vancouver Registry No. L013473). Hearing dates not set. Subject matter: partial decertification.

6. *Paddy Goggins* v. *Colin Taylor, Q.C., in his capacity as an Arbitrator, Labour Relations Board of British Columbia, Norske Skog Canada Limited, Communications, Energy and Paperworkers' Union of Canada, Local 76* – Judicial review of BCLRB Nos. B350/2000 and B288/2001 – (Vancouver Regis-try No. L013503). Matter to be heard April 29 and 30, 2002. Subject matter: arbitral review.

JUDICIAL REVIEW CASES SETTLED OR WITHDRAWN IN 2001:

1. *B.C. Ferry and Marine Workers Union* v. *British Columbia Ferry Corporation* – Judicial review of BCLRB No. B155/2001 (Vancouver Registry No. 013134). Settled November 26, 2001.

2. *Lloyd Duhaime* v. *The Labour Relations Board* – Petition asking the Court to determine that Duhaime's Section 12 complaint met the test of an apparent contravention under Section 13 (Vancouver Registry No. L010087). Notice of Discontinuance filed March 13, 2001.

3. *Juan Antonio Blanco-Arriba* v. *Labour Relations Board of British Columbia* – Civil action (Vancouver Registry No. L000979). Consent Dismissal Order entered September 18, 2001.

V. STATISTICAL TABLES

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EXPLANATORY NOTES TO TABLES

The following tables provide an analysis of the applications filed and disposed of in 2001. In some cases, statistics from 2000 and other years are provided for comparative purposes. A number of changes have been made over the past few years in the statistical base used in some of the categories in Table 1. The changes have been summarized as follows for the convenience of users.

Complaints of Unfair Labour Practices

Prior to 1989, complaints under Sections 2 or 3 (now Sections 5 or 6) of the legislation were not broken down by sub-section. From 1989 on, complaints under each particular sub-section were counted as one complaint. In 1996, the Board decided to revert to the pre 1989 method of counting these complaints. The change affects the statistics published as Sections 2,3 and 4 of the *Industrial Relations Act* and Sections 5,6,7 and 9 of the *Labour Relations Code*. The following table displays the statistics as they were published and as they would have been under the pre-1989 method of counting.

Type of Application	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Other Unfair Labour Practice Complaints (ss.5,6,7 and 9 of the *Labour Relations Code* or ss.2,3, and 4 of the *Industrial Relations Act*)	1995	825	909	26	0	573	192	118	0	449
	1995 (rev)	488	529	25	0	338	97	69	0	221
	1994	899	831	9	0	586	136	100	0	362
	1994 (rev)	513	467	9	0	326	74	58	0	176
	1993	748	676	3	0	440	134	99	0	331
	1993 (rev)	422	390	2	0	249	73	66	0	177
	1992	416	345	0	0	205	108	32	0	176
	1992 (rev)	228	185	0	0	112	54	19	0	83
	1991	346	370	0	0	241	92	37	0	NP
	1991 (rev)	187	199	0	0	135	44	20	0	
	1990	386	388	5	0	220	100	63	0	NP
	1990 (rev)	229	225	3	0	124	62	36	0	
	1989	209	177	0	0	96	47	34	0	NP
	1989 (rev)	123	118	0	0	61	36	21	0	

NP – Not Published

For an Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship

Prior to 1989, an application regarding the inclusion or exclusion of employees from a bargaining unit was counted as one application for each in question. If the application was withdrawn, it was counted as one application regardless of the number of employees involved. From 1989 on, an application regarding the inclusion or exclusion of employees has been counted as one application.

For an Order or Opinion Pertaining to Applications Pursuant to Part 5 (Strikes, Lockouts, Picketing, etc.)

Prior to 1988, each application under Part 5 was counted as one application, regardless of the sections cited. One application could cover for example, a strike or a picket or a combination of both. From 1988 on, each section and sub-section of Part 5 has been counted as a separate application.

To File an Order in the Supreme Court

Applications to file orders in the Supreme Court were counted as applications for the first time in 1989. These applications had been processed by the Board/Council since 1974 but had not been registered or counted prior to 1989.

Stay Applications

These applications have been added to applications filed and disposed of in Table 1 for the first time in 1993. They are included in the Miscellaneous category. In previous years, these applications were not counted.

General Notes

For the convenience of users, the following is a brief description of some of the disposition codes used in Table 1.

- Applications and complaints granted include those where an order is issued, whether a regular order or a consent order. If an application is partially granted, it is included in this category.
- Applications and complaints dismissed include those where no violation is deemed to have occurred, where the application does not conform to statutory or regulatory time limits or where it is determined no further action is warranted.
- Applications and complaints not proceeded with include only those where the applicant has not supplied the Board with sufficient information to process the application. The application is returned but the applicant is free to reapply.
- Complaints that do not require a decision from the Board are designated settled even in those cases where the applicant submits a withdrawal.

It is important to note when using these statistics that the work content embodied in individual applications varies widely, both among different categories of applications and among applications in the same category. The work content of the administrative, investigative and decision-making functions can vary widely as well, from category to category and from application to application.

TABLE 1
Applications and Complaints Filed and Disposed of in 2000 - 2001

TYPE OF APPLICATION	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearings Held
Complaints of Unfair Labour Practices										
Complaints Regarding Internal Union Affairs (s.10)	2000	24	7	0	0	1	2	4	0	3
	2001	21	21	3	0	7	0	11	0	3
Complaints Regarding Duty to Bargain in Good Faith (s.11)	2000	90	61	0	0	46	10	5	0	15
	2001	61	96	0	0	84	5	7	0	17
Complaints Regarding Duty of Fair Representation (s.12)	2000	199	196	85	0	30	3	75	0	27
	2001	227	224	95	0	47[2]	7	75[3]	0	19
Other Unfair Labour Practice Complaints (ss.5,6,7, 8 and 9)[4]	2000	518	544	5	0	380	104	55	0	284
	2001	339	368	0	0	284	51	33	0	110
Religious Exemption (s.17)	2000	12	16	1	0	0	14	1	0	1
	2001	16	15	3	1	0	11	0	0	0
Certification Applications (ss.18,19 and 28)	2000	376[5]	379	1	33	0	263[6]	32	0	35
	2001	309[7]	313	0	99	0	181[8]	33	0	254

---

1 22 of the 78 dismissed complaints, filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.

2 For 40 settled complaints, a settlement conference was held.

3 37 of the 75 dismissed complaints, filed under the *Labour Relations Code* were dismissed because no *prima facie* case was found.

4 In 1996, the Board changed the method of counting complaints under Sections 5 and 6 of the Labour Relations Code. (See Explanatory Notes for details.)

5 12,823 employees were included in the 376 certification applications filed in 2000. Five of these applications were filed jointly by more than one union.

6 10,520 employees were included in the 263 certification applications granted in 2000. Four of the certifications granted involving 3,330 employees were processed under the 'raid' provisions of the legislation.

7 30,632 employees were included in the 309 certification applications filed in 2001. Nine of these applications were filed jointly by more than one union. Of the 30,632 employees, 20,765 were included in 21 certification applications filed by West Coast Backgrounders Union, Local 1.

8 5,980 employees were included in the 181 certification applications granted in 2001. Twelve of the certifications granted involving 800 employees were processed under the 'raid' provisions of the legislation. The estimate of employees per application is derived from the estimate on the union application. Variances do occur between the time of application and the time of disposal of the application. In case of applications filed, the estimate could include some multiple counting where more than one union applied to cover the same group of employees.

TABLE 1

Applications and Complaints Filed and Disposed of in 2000 - 2001 – Continued

TYPE OF APPLICATION	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Certification Variances (ss.28 and 142)	2000	283[1]	281[2]	4	37	0	234	6	0	79
	2001	277[3]	281[4]	7	28	0	229	17	0	98
Certification Cancellations[5] (ss.33 and 142)	2000	188	199	27	24	0	107	31	10	29
	2001	117	121	13	15	0	80	13	0	85
Cancellation of a Voluntary Recognition (s.34)	2000	7	9	0	1	0	6	2	0	1
	2001	8	9	0	2	0	6	1	0	8
Permission to Alter Conditions of Employment (ss.32 and 45)	2000	2	5	0	1	0	3	1	0	2
	2001	1	3	0	2	0	1	0	0	1
Alleged Unlawful Alteration of Employment Terms and Conditions (ss.32 and 45)	2000	58	63	0	0	56	6	1	0	22
	2001	51	64	1	0	48	13	2	0	20
Declaration of Successor Status										
Successor Employer (s.35)	2000	154	144	2	10	0	85	8	0	39
	2001	98	104	0	11	0	85	8	0	8
Successor Union (s.37)	2000	92	81	0	3	0	44	5	0	29
	2001	12	14	0	1	0	10	3	0	4
Common Employer (s.38)	2000	30	31	0	14	0	8	9	0	13
	2001	27	25	0	15	0	6	4	0	8

[1] One of the 283 certification variance applications filed in 2000 was for partial decertification.

[2] Three of the 281 certification variance applications disposed of in 2000 were for partial decertification. See TABLE 3

[3] 14 of the 277 certification variance applications filed in 2001 were for partial decertification.

[4] 15 of the 281 certification variance applications disposed of in 2001 were for partial decertification. See TABLE 3.

[5] See TABLE 3

TABLE 1
Applications and Complaints Filed and Disposed of in 2000 - 2001 – Continued

TYPE OF APPLICATION	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Accreditation Applications (s.43)	2000	0	0	0	0	0	0	0	0	0
	2001	0	0	0	0	0	0	0	0	0
Accreditation Variances (ss.43 and 142)	2000	51	56	1	1	0	54	0	0	0
	2001	51	51	0	0	0	51	0	0	3
Accreditation Cancellations (s.142)	2000	0	0	0	0	0	0	0	0	0
	2001	0	0	0	0	0	0	0	0	0
Alleged Failure to Execute or Comply With a Collective Agreement (s.49)	2000	17	17	1	0	11	3	2	0	6
	2001	6	6	0	0	6	0	0	0	0
First Collective Agreement (s.55)	2000	31	33	0	0	18	0	0	15	0
	2001	27	25	0	0	12	0	0	13[2]	0
Part 5 Applications (Strikes, Lockouts, Picketing, etc.) (ss.57 to 70)	2000	169	184	0	0	101	58	24	0	53
	2001	120	129	0	0	60	58	11	0	76
Replacement Workers (s.68)	2000	29	31	0	0	17	13	0	1	16
	2001	15	15	0	0	10	4	1	0	6
Essential Service Designations (s.72)	2000	20	20	0	0	8	12	0	0	2
	2001	502	503	0	0	74	429	0	0	61

[1] For six cases, the dispute was referred to binding arbitration. For four cases, the parties were allowed to exercise their right to strike or lockout. In three cases, the union was decertified. For one case, the trade union's strike vote was set aside and therefore the Section 55 process was found inappropriate. In one case, the application was rescinded, as the *Labour Relations Code* requires a valid strike mandate.

[2] For four cases, the dispute was referred to binding arbitration. For five cases, the parties were allowed to exercise their right to strike or lockout. In one case, the appointment under Section 55 was rescinded after a ruling that the vote taken under Section 60 of the *Labour Relations Code* was of no force and effect. For one case, the appointment under Section 55 was rescinded and a mediator appointed under Section 74. In one case, the union was decertified. And for one case, the application was withdrawn prior to meeting with the parties.

TABLE 1
Applications and Complaints Filed and Disposed of in 2000 - 2001 – Continued

TYPE OF APPLICATION	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Last Offer Vote (s.78)	2000	38	38	0	2	0	36	0	0	0
	2001	19	20	0	1	0	19[2]	0	0	1
Review of Arbitration Award (s.99)	2000	68	69	0	5	0	15	49	0	20
	2001	57	60	0	13	0	16	31	0	20
Interim Order (s.133)	2000	14	13	0	6	0	4	3	0	7
	2001	9	13	0	7	0	2	4	0	7
File an Order in Supreme Court (s.135)	2000	66	65	0	24	0	34	7	0	0
	2001	69	72	0	35	0	36	1	0	0
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship (s.139)	2000	83	75	5	28	0	0	0	2	39
	2001	79	87	0	52	0	0	0	35[3]	35
Reconsideration of a Decision (s.141)	2000	116	129	0	11	0	19	99	0	41
	2001	104	111	0	13	0	23	75[5]	0	19
Declaratory Opinion (Excluding Declaratory Opinions Pertaining to Part 5 of the Legislation) (s.143)	2000	9	11	0	5	0	2	4	0	3
	2001	17	11	0	5	0	3	3	0	6

[1] In 22 cases, the employees voted to reject the offer. In 13 cases, the employees voted to accept the offer. And for one case, the employer withdrew the application before the vote was held.

[2] In 10 cases, the employees voted to reject the offer. In seven cases, the employees voted to accept the offer. In one case, the employer withdrew the application before the vote was held. And for one case, the application was found premature.

[3] Ruling Made.

[4] For 79 of the 99 applications dismissed, leave to apply was denied.

[5] For 65 of the 75 applications dismissed, leave to apply was denied. See TABLE 5.

TABLE 1
Applications and Complaints Filed and Disposed of in 2000 - 2001 - Continued

TYPE OF APPLICATION	NUMBER OF APPLICATIONS OR COMPLAINTS									
	Year	Filed	Disposed of	Not Proceeded With	Withdrawn	Settled	Granted	Dismissed	Other	Hearing Held
Miscellaneous	2000	140[1]	151[2]	2	24	51	50	24	0	41
	2001	152[3]	149[4]	0	9	59	62	19	0	30
TOTAL	2000	2,873	2,907	135	298	719	1,271	442	42	1,113[5]
	2001	**2,791**	**2,910**	**122**	**309**	**691**	**1,388**	**352**	**48**	**901**[6]

NOTE: The sections quoted are from the *Labour Relations Code* unless otherwise indicated.

[1] Includes 19 stay applications.

[2] Includes 16 stay applications: 12 of which were dismissed, one of which was granted, and three of which were withdrawn.

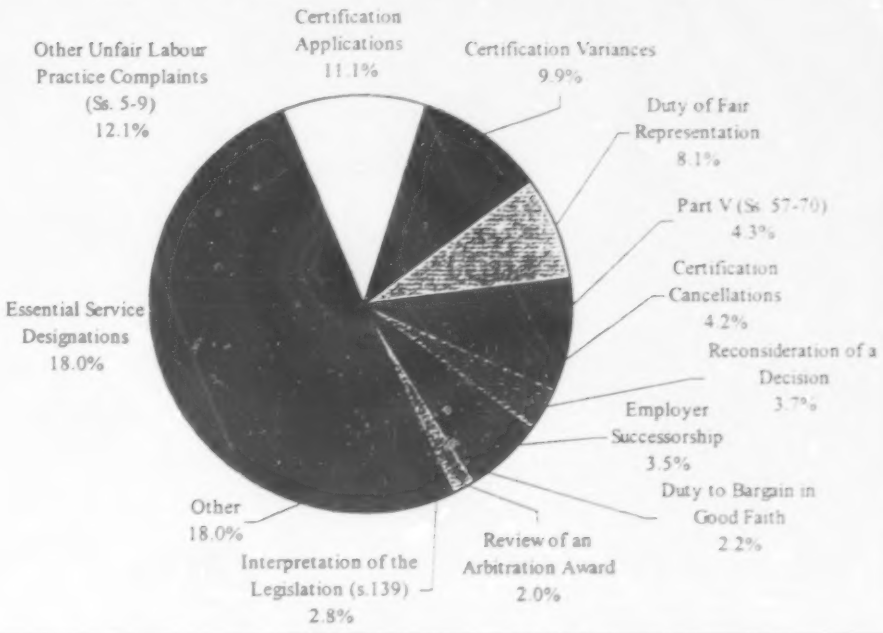
[3] Includes 14 stay applications.

[4] Includes 16 stay applications: 12 of which were dismissed, two of which were granted, and two of which were withdrawn.

[5] 1,118 applications disposed of in 2000 were heard some time during the process. In 2000, the Board held 690 hearings (including 492 expedited hearings to deal with certification and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2000.

[6] 901 applications disposed of in 2001 were heard some time during the process. In 2001, the Board held 613 hearings (including 402 expedited hearings to deal with certification and decertification applications), some of which dealt with multiple applications and for some of which, the applications had not been disposed of by the end of 2001.

Applications and Complaints Filed in 2001


Certification Applications 11.1%
Certification Variances 9.9%
Duty of Fair Representation 8.1%
Part V (Ss. 57-70) 4.3%
Certification Cancellations 4.2%
Reconsideration of a Decision 3.7%
Employer Successorship 3.5%
Duty to Bargain in Good Faith 2.2%
Review of an Arbitration Award 2.0%
Interpretation of the Legislation (s.139) 2.8%
Other 18.0%
Essential Service Designations 18.0%
Other Unfair Labour Practice Complaints (Ss. 5-9) 12.1%

Applications and Complaints Filed in 2000

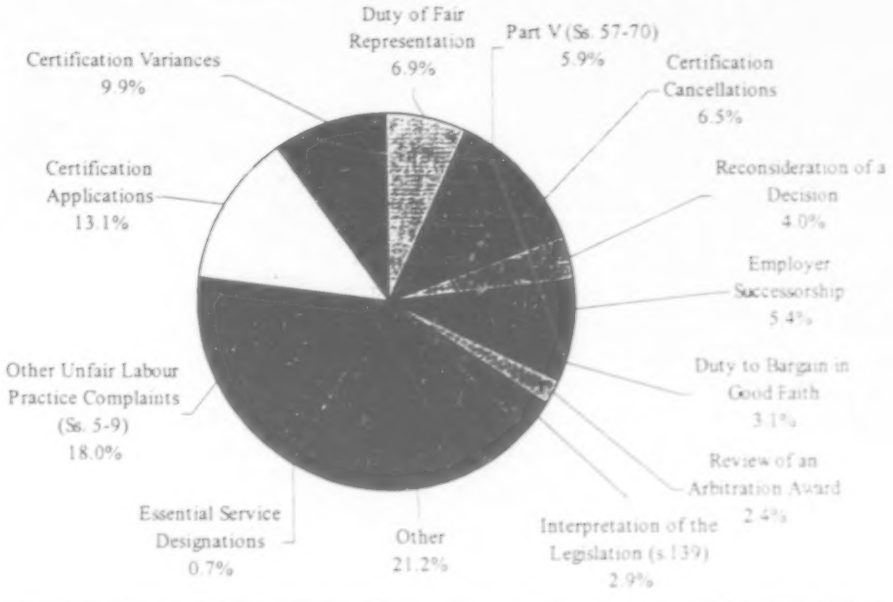

Duty of Fair Representation 6.9%
Part V (Ss. 57-70) 5.9%
Certification Variances 9.9%
Certification Cancellations 6.5%
Certification Applications 13.1%
Reconsideration of a Decision 4.0%
Employer Successorship 5.4%
Other Unfair Labour Practice Complaints (Ss. 5-9) 18.0%
Duty to Bargain in Good Faith 3.1%
Review of an Arbitration Award 2.4%
Interpretation of the Legislation (s.139) 2.9%
Other 21.2%
Essential Service Designations 0.7%

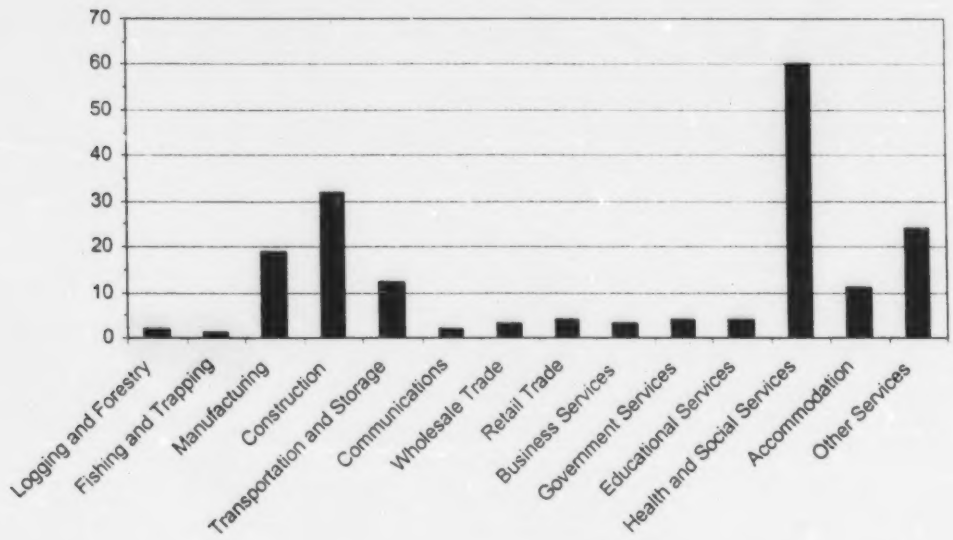
TABLE 1A

Certification Applications Granted in 2001 Analyzed by Industry

TYPE OF INDUSTRY	NUMBER OF CERTIFICATION APPLICATIONS GRANTED	NUMBER OF EMPLOYEES
Logging and Forestry	2	46
Fishing and Trapping	1	25
Manufacturing	19	829
Construction	32	1,303
Transportation and Storage	12	414
Communications and other Utilities	2	51
Wholesale Trade	3	34
Retail Trade	4	287
Business Services	3	77
Government Services	4	155
Educational Services	4	56
Health and Social Services	60	1,386
Accommodation, Food and Beverage Services	11	290
Other Services	24	1,027
TOTAL	**181**	**5,980**

CERTIFICATION APPLICATIONS GRANTED IN 2001 ANALYZED BY INDUSTRY

Number of Applications



Number of Employees

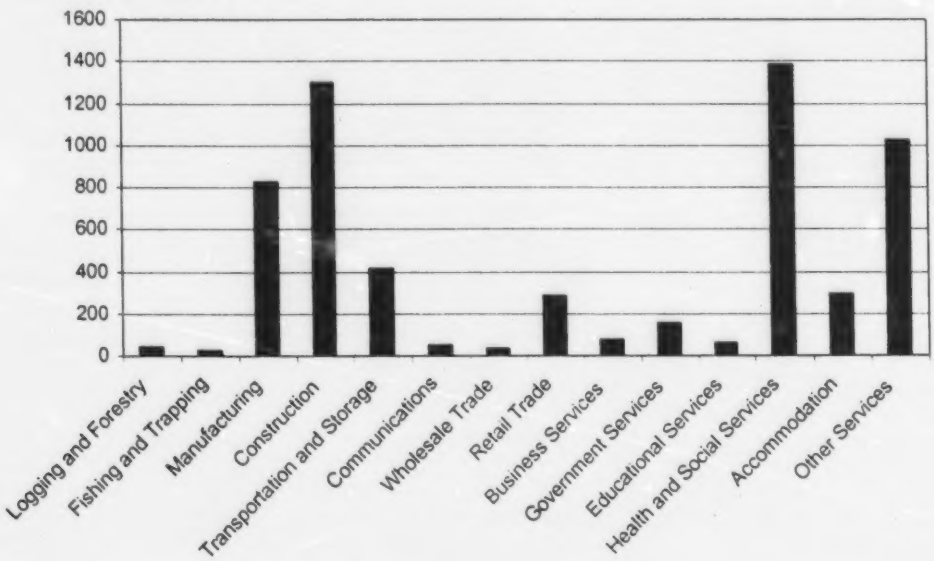


TABLE 1B

Certification Applications Filed and Granted in 2001 Analyzed by Union

UNION NAME (Names have been abbreviated. Where possible, the commonly used, shortened form appears.)	Number of Certification Applications Filed	Number of Certification Applications Granted
Boilermakers	1	1
Carpenters	9	6
Cement Masons (formerly identified as Plasterers)	2	0
CLAC	13	8
Electrical Workers (IBEW)	7	7
Elevator Constructors	2	1
Glazier & Glass Workers	1	0
Iron Workers	9	3
Labourers	12	3
Machinists & Aerospace Workers	2	2
Operating Engineers (IUOE)	20	7
Painters (*excluding Glaziers 1527*)	9	4
Plumbers & Refrigeration Workers	6	3
CEP	9	5
IWA	20	12
Longshore (ILWU)	1	1
Marine Workers	1	1
Merchant Service	1	1
Owner-Operator Workers (COOWA)	1	0
Seafarers	2	1
Teamsters	8	6
Film Craftspeople (ACFC-CEP)	8	8
Theatrical Stage Employees *et al* (IATSE)	1	0
West Coast Backgrounders	21	0
Service Employees (SEIU)	1	1
Service Workers	1	1
Hotel Employees	8	6
Health Science Association (HSA)	1	1
Hospital Employees Union (HEU)	24	20
Nurses (BCNU)	20	17
Telecommunications Workers (TWU)	3	3
CAW	13	8
Steelworkers	2	1
UNITE	1	1
Fishers (UFAWU-CAW)	4	1
Bakery Workers	1	0
Food & Commercial Workers (UFCW)	4	1
Hospital Employees Union (HEU)	24	20
Nurses (BCNU)	20	17

TABLE 1B
Certification Applications Filed and Granted in 2001 - Analyzed by Union - Continued

UNION NAME (Names have been abbreviated. Where possible, the commonly used, shortened form appears.)	Number of Certification Applications Filed	Number of Certification Applications Granted
Telecommunications Workers (TWU)	3	3
CAW	13	8
Steelworkers	2	1
UNITE	1	1
Fishers (UFAWU-CAW)	4	1
Bakery Workers	1	0
Food & Commercial Workers (UFCW)	4	1
Retail Wholesale Union (RWU)	2	1
CUPE	5	2
OPEIU/OTEU	2	1
BCGEU (excluding Brewery Workers)	54	33
PSAC	4	3
Single Employer Independent Union	4	3
TOTAL	**323**[1]	**184**[1]

TABLE 2
Certification Applications Decided in 2001

Number of Applications	Granted	Dismissed	Total
Unorganized Employees	169	26	195
Organized Employees	12	7	19
TOTAL	**181**	**33**	**214**

Number of Employees	Granted	Dismissed	Total
Unorganized Employees	5,180	951	6,131
Organized Employees	800	122	922
TOTAL	**5,980**	**1,073**	**7,053**

[1] Adding the individual members in the column produces a larger number because some applications were filed jointly by more than one union.

TABLE 2A
Certification Applications Granted in 2001 by the Size of the Bargaining Unit

Number of Employees	Number of Certification Applications	Percentage of Certification Applications	Cumulative Percentage
1 to 10	72	39.8%	39.8%
11 to 20	33	18.2%	58.0%
21 to 30	23	12.7%	70.7%
31 to 40	11	6.1%	76.8%
41 to 50	6	3.3%	80.1%
51 to 60	2	1.1%	81.2%
61 to 70	5	2.8%	84.0%
71 to 80	5	2.8%	86.8%
81 to 90	2	1.1%	87.9%
91 to 100	5	2.8%	90.7%
101 to 200	16	8.8%	99.5%
Over 200	1	0.5%	100.0%
TOTAL	181		

TABLE 2B
Certification Applications Granted Between 1990 and 2001 by the Size of the Bargaining Unit

	Number and Percentage of Certification Applications						
Year	1 to 20 Employees		21 to 50 Employees		Over 50 Employees		Total
1990	181	72.4%	47	18.8%	22	8.8%	250
1991	173	70.9%	47	19.3%	24	9.8%	244
1992	130	66.0%	47	23.9%	20	10.1%	197
1993	353	69.4%	102	20.0%	54	10.6%	509
1994	292	66.9%	86	19.7%	59	13.4%	437
1995	253	64.4%	100	25.4%	40	10.2%	393
1996	312	72.5%	80	18.6%	38	8.9%	430
1997	285	69.6%	71	17.4%	53	13.0%	409
1998	233	67.0%	65	18.7%	50	14.3%	348[1]
1999	239	65.8%	65	17.9%	59	16.3%	363[2]
2000	169	64.3%	45	17.1%	49	18.6%	263
2001	105	58.0%	40	22.1%	36	19.9%	181

[1] One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1998 amounts to 349.

[2] One single certification application resulted in the issuance of two individual certifications; thus the total of certifications granted in 1999 amounts to 364.

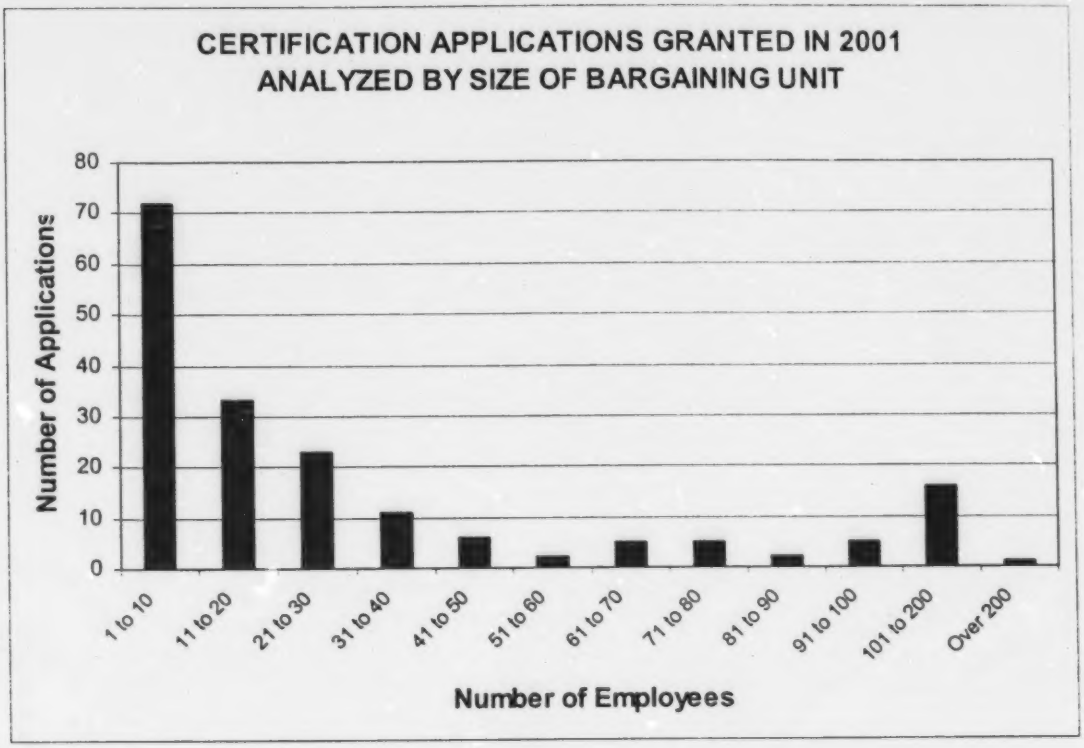

CERTIFICATION APPLICATIONS GRANTED IN 2001
ANALYZED BY SIZE OF BARGAINING UNIT
Number of Applications
80
70
60
50
40
30
20
10
0
1 to 10
11 to 20
21 to 30
31 to 40
41 to 50
51 to 60
61 to 70
71 to 80
81 to 90
91 to 100
101 to 200
Over 200
Number of Employees

TABLE 3
Applications to Cancel Certifications Disposed of in 2000 - 2001

	Number of Applications	
	2000	2001
Filed by Employee(s) (s.33)		
Granted	87	67
Dismissed	29	13
Not Proceeded With	27	13
Withdrawn	19	11
TOTAL	**162**	**104**
Filed by Employee(s) (s.142)[1]		
Granted	2	5
Dismissed	0	5
Not Proceeded With	0	5
Withdrawn	1	0
TOTAL	**3**	**15**
Filed by Employer(s)		
Granted	13	7
Withdrawn	4	3
TOTAL	**17**	**10**
Filed by Union(s)		
Granted	15	6
Dismissed	2	0
Withdrawn	1	1
TOTAL	**18**	**7**
Filed by Employer(s)/Union(s)		
Granted	1	0
TOTAL	**1**	**0**
Filed by Employee(s)/Union(s)		
Granted	1	0
TOTAL	**1**	**0**
Summary		
Granted	119	85
Dismissed	31	18
Not Proceeded With	27	18
Withdrawn	25	15
TOTAL	**202**[2]	**136**[2]

[1] Applications filed under Section 142 for 'partial decertification' are included in TABLE 1 under the category Certification Variances. The inclusion of these applications in TABLE 3 is new for the 2001 Annual Report. The three applications disposed of in 2000 have been included in the total for comparison purposes.

[2] The summary totals in TABLE 3 do not match the number of Certification Cancellations disposed of in TABLE 1. Three partial decertification plus 199 certification cancellation applications were disposed of in 2000; and 15 partial decertification plus 121 certification cancellation applications were disposed of in 2001.

TABLE 4
Representation Applications Disposed of in 2001 Resulting in a Vote

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	NUMBER OF SUCCESSFUL APPLICATIONS	PERCENTAGE SUCCESSFUL	TOTAL NUMBER OF ELIGIBLE VOTERS
Certification --- a vote for or against one union or between two unions applying for the same unit				
January 1 to August 15	21	13	62%	1,105
August 16 to December 31	38	28	74%	734
Certification --- a vote between an applicant and an incumbent union	18[1]	12	67%	883
Expansion of a bargaining unit	11	7	64%	114
Decertification	79	68[2]	86%	1,525
Partial decertification	7	5	71%	71
Cancellation of a voluntarily recognized collective agreement	5	5	100%	51
Successor employer declaration	1	1	100%	23
Appeal of S.24 application for second vote on an expansion of bargaining unit application	1	1	100%	257
Appeal of certification	1	1	100%	8
TOTAL	**182**	**141**	**77%**	**4,771**

[1] Six applications resulted in three votes because two or more unions were applying separately for the same unit.
[2] One Section 33(1) application filed by an Employer resulted in a vote by agreement between the parties.

TABLE 5

Reconsiderations Disposed of in 2001

TYPE OF APPLICATION BEING RECONSIDERED	LEAVE DENIED	DISMISSED	GRANTED	WITHDRAWN	TOTAL
Internal Union Affairs	1	0	0	0	1
Duty to Bargain in Good Faith	0	0	1	0	1
Duty of Fair Representation Adjudication	26	3	5	2	36
Unfair Labour Practice Adjudication Excluding Duty of Fair Representation	1	0	1	1	3
Certification	6	1	6	1	14
Variance of a Certification	2	0	0	0	2
Partial Decertification	1	1	2	0	4
Alleged Unlawful Alteration of Employment Terms and Conditions	1	0	0	0	1
Declaration of Employer Successor Status	1	0	0	0	1
Declaration of Trade Union Successor Status	1	0	0	0	1
Common Employer	0	0	1	1	2
Alleged Illegal Strikes, Lockouts, Picketing, etc.	2	0	2	1	5
Replacement Workers	1	0	0	1	2
Essential Services Designations	0	0	0	2	2
Last Offer Vote	1	0	0	0	1
Review of Arbitration Award	9	4	1	0	14
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship	2	0	2	0	4
Ruling re: Representation Vote Ordered by the Board	0	1	1	0	2
Ruling re: Contract Administration Fees	1	0	0	0	1
Ruling re: Stay of Decision	0	0	0	1	1
Ruling re: Remedy	3	0	0	0	3
Ruling re: Interim Ruling	0	0	0	1	1
Ruling re: Trade Union Financial Statement	2	0	0	0	2
Ruling re: Procedure	4	0	1	2	7
TOTAL	**65**	**10**	**23**	**13**	**111**

Appellant	Leave Denied	Dismissed	Granted	Withdrawn	Total
Employer(s)	11	3	9	6	29
Union(s)	15	1	10	5	31
Employee(s)	39	6	4	1	50
Employer(s)/Employee(s)(Joint Appln.)	0	0	0	1	1
TOTAL	**65**	**10**	**23**	**13**	**111**

RECONSIDERATIONS DISPOSED OF IN 2001
(Type of Application being Reconsidered)

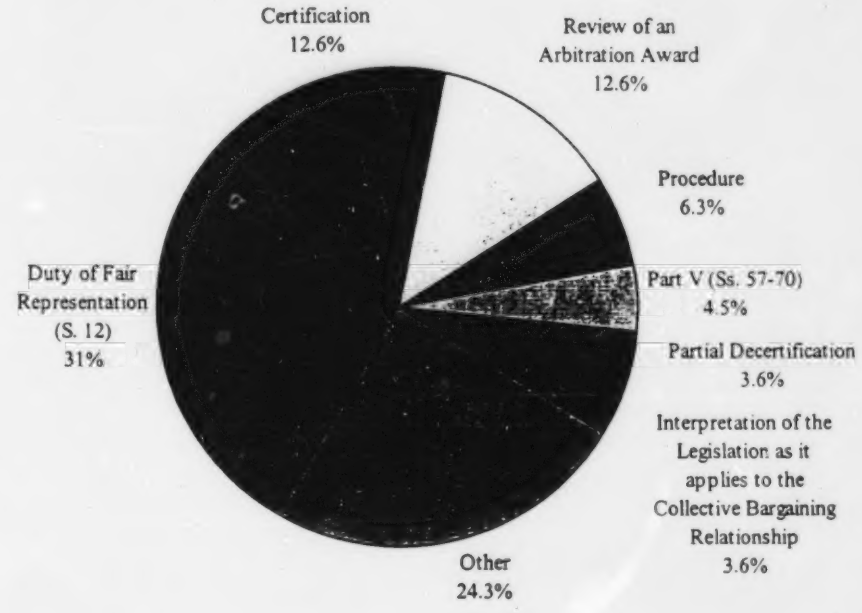
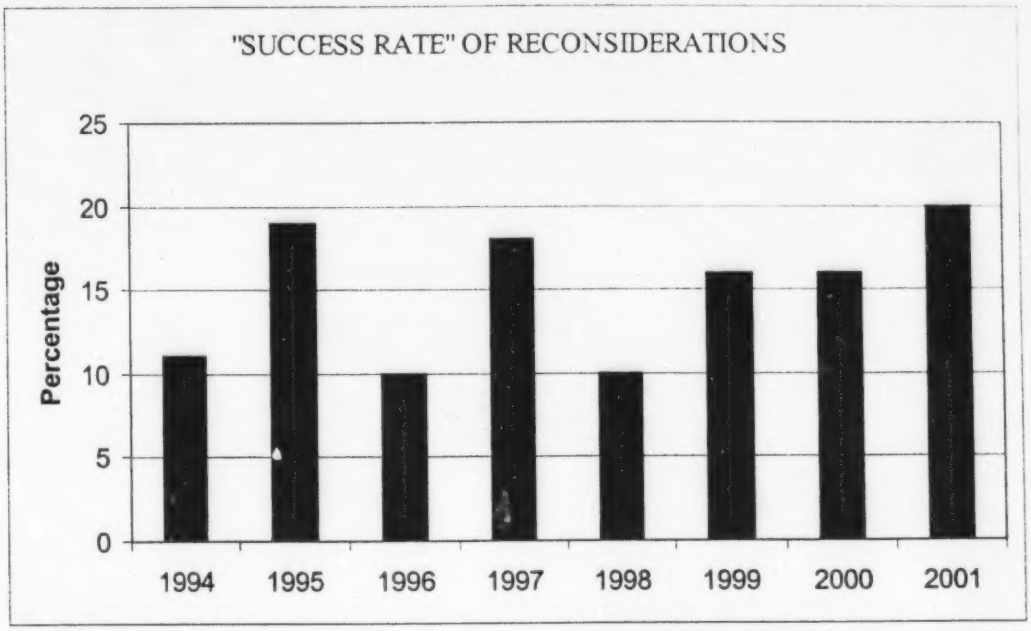


TABLE 6

"Success" Rate of Reconsiderations

	1995	1996	1997	1998	1999	2000	2001
Total Applications Disposed of	131	87	113	134	150	129	111
Number of Applications Withdrawn	16	7	21	20	9	11	13
Number of Applications Processed to a Final Decision	115	80	92	114	141	118	98
Number of Applications resulting in a Revision of the Original Decision	22	8	17	11	22	19	23
"Success" Rate of Reconsiderations	19%	10%	18%	10%	16%	16%	20%


"SUCCESS RATE" OF RECONSIDERATIONS
Percentage
25
20
15
10
5
0
1994
1995
1996
1997
1998
1999
2000
2001

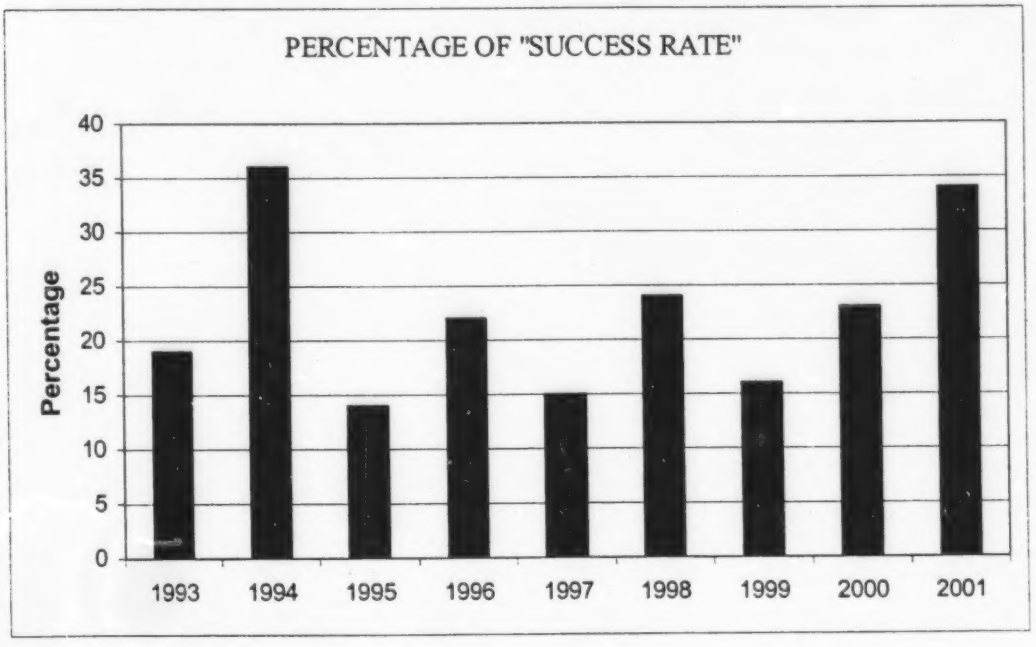

PERCENTAGE OF "SUCCESS RATE"
Percentage
40
35
30
25
20
15
10
5
0
1993
1994
1995
1996
1997
1998
1999
2000
2001

TABLE 7

Applications Pursuant to Part 5 of the Labour Relations Code
(Strikes, Lockouts, Picketing, etc.) Disposed of in 2001

TYPE OF APPLICATION	NUMBER OF APPLICATIONS	AT A FORMAL HEARING	IN A FORMAL DECISION
A Dispute Settled			
1. Re: Alleged Illegal Lockout	4	0	0
2. Re: Alleged Illegal Strike or a Challenged Strike Vote	30	12	0
3. Re: Picketing (Employer Complaint)	19	2	0
4. Re: Picketing (Trade Union Application for a Declaratory Opinion)	6	3	0
5. Re: Activity Affecting Business, etc.	1	0	0
Sub-Total	60	17	0
B. Dispute Disposed of by an Adjudication that: a) a violation had occurred or would occur or that a specific activity should be restricted, or b) that certain proposed picketing be allowed			
1. Re: Alleged Illegal Lockout	2	2	0
2. Re: Alleged Illegal Strike or a Challenged Strike Vote	18	18	9
3. Re: Picketing (Employer Complaint)	36	28	9
4. Re: Activity Affecting Business, etc.	2	2	2
Sub-Total	58	50	20
C. Dispute Disposed of: a) by an adjudication that **no** violation had occurred or would occur or that a specific activity should **not** be restricted, or b) by a refusal to rule on the proceedings			
1. Re: Alleged Illegal Lockout	2	0	2
2. Re: Alleged Illegal Strike or a Challenged Strike Vote	4	4	6
3. Re: Picketing (Employer Complaint)	1	1	1
4. Re: Picketing (Trade Union Application for a Declaratory Opinion)	3	3	5
5. Re: Activity Affecting Business, etc.	1	1	1
Sub-Total	11	9	15
TOTAL	**129**	**76**	**35**

Note: The applications in Table 7 include those filed to avert threatened strikes, lockouts and/or picketing (through a declaratory opinion, a jurisdictional decision, etc.) as well as those protesting some form of actual job action.

TABLE 8

2001 Applications and Complaints Analyzed by Applicant

	Filed by Employer(s)	Filed by Union(s)	Filed by Employee(s)	Other	Total[1]
Complaints of Unfair Labour Practices					
Complaints Regarding Internal Union Affairs	1	0	20	0	21
Complaints Regarding Duty to Bargain in Good Faith	8	53	0	0	61
Complaints Regarding Duty of Fair Representation	0	3	224	0	227
Other Unfair Labour Practice Complaints	14	319	17	0	350
Religious Exemption	0	0	16	0	16
Certification Applications	0	309	0	0	309
Certification Variances	76	183	19	0	278
Certification Cancellations	6	8	103	0	117
Cancellation of a Voluntary Recognition	1	0	7	0	8
Permission to Alter Conditions of Employment	1	0	0	0	1
Alleged Unlawful Alteration of Employment Terms and Conditions	0	51	1	0	52
Declaration of Successor Status					
Successor Employer	38	61	0	0	99
Successor Union	0	12	0	0	12
Common Employer	3	25	0	0	28
Accreditation Variances	51	0	0	0	51
Alleged Failure to Execute or Comply With Collective Agreement	0	6	0	0	6
First Collective Agreement	8	19	0	0	27
Part 5 Applications (Strikes, Lockouts, Picketing, etc.)	104	13	3	0	120
Replacement Workers	0	15	0	0	15
Essential Service Designations	0	0	0	502	502
Last Offer Vote	19	0	0	0	19
Review of Arbitration Award	16	28	13	0	57
Interim Order	4	5	0	0	9
File Order in Supreme Court	45	18	5	1	69
Interpretation of the Legislation as it Applies to the Collective Bargaining Relationship	25	51	3	0	79
Reconsideration of a Decision	27	31	46	0	104
Declaratory Opinion (Excluding Declaratory Opinions Pertaining to Part 5 of the Legislation)	3	13	1	0	17
Miscellaneous	53	76	16	7	152
TOTAL	**503**	**1,299**	**494**	**510**	**2,806[1]**

[1]Totals by applicant do not equate with total applications because applications were filed jointly, by more than one type of party.

TABLE 9

Analysis of Mediation Officer Appointments in 2001

Activity	
Appointments continued from previous year (Section 74)	41
Appointments continued from previous year (Section 55)	3
Appointments made - January 1 to December 31, 2001 (Section 74)	175
Appointments made - January 1 to December 31, 2001 (Section 55)	27
TOTAL	**246**
Disposition of Appointments	
Mediated settlement (Section 74)	186
Mediated settlement (Section 55)	12
Other (Section 55) - See Table 1 - Footnotes	13
Appointments continuing (Section 74)	30
Appointments continuing (Section 55)	5
TOTAL	**246**

TABLE 10

Time Required to Process Certain Applications in 2001

Type of Application	Number of Applications Disposed of	Average Number of Days	Median Number of Days
Unfair Labour Practice Complaints Under S.6 of the *Labour Relations Code* Where a Dismissed Employee is Involved	68	132	53.5
Complaints Regarding Duty of Fair Representation	129	259	159
Certification	313	36	10
Cancellation of Certification Under Section 33(2) of the *Labour Relations Code*	91	25	11
Declaration of Successor Employer	104	80	34
Common Employer	25	248	181
Review of Arbitration Award	60	199	149
Reconsideration of Decision	111	137	75

TABLE 11

Officer Assignments in 2001

	TYPE OF APPLICATION				
	Part 5[1]	Unfair Labour Practice[2]	Certification and Expanded Bargaining Unit	Other	Total
Settled/Withdrawn	33	96	51	39	219
Resolved Issues/ Assisted at Hearing	5	2	50	17	74
Narrowed Issues/ Assisted at Hearing	13	24	61	34	132
To Adjudication (no informal)	7	22	7	10	46
Report of Investigation	0	1	4	18	23
Other	10	6	6	9	31
TOTAL	**68**	**151**	**179**	**127**	**525**

[1] Includes strikes, lockouts, picketing, etc.
[2] Excluding duty of fair representation.

TABLE 12

Requests for Automatic Certification Pursuant to Section 14(4)(f) of the *Labour Relations Code* (Previously Section 8(4)(e) of the *Labour Relations Code* and the *Industrial Relations Act*) as a Result of an Alleged Unfair Labour Practice Violation

YEAR	REQUESTED	GRANTED
1977	25	1
1978	17	1
1979	25	1
1980	22	0
1981	34	2
1982	15	2
1983	18	0
1984	21	3
1985	16	2
1986	18	2
1987	17	0
1988	10	0
1989	10	0
1990	18	3
1991	20	1
1992	32	6
1993	31	2
1994	31	2
1995	35	0
1996	41	1
1997	52	3
1998	40	0
1999	51	0
2000	21	1
2001	9	0
TOTAL	**629**	**33**

Note: Figures for 1977 to 1992 are from the Board's Annual Reports. Figures for 1993 to 1995 were not included in the Annual Reports for these years.

These requests relate to *Other Unfair Labour Practice Complaints* and are not included under Applications for Certification.

APPENDIX OF LEGISLATIVE REFERENCE TABLES

Note: The following tables are provided for information only. Persons wishing to rely on legislative material for legal purposes should consult the official sources.

Table A

Statutory History of the *Labour Relations Code*

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Labour Code Amendment Act, 1982, S.B.C. 1982, c. 59	*August 4, 1982 Proclamation*		*Reg. 354/82, Pt. II, V. 25, p. 564*
Regulations Act, S.B.C. 1983, c. 10, s. 21 and 25 and Schedules 2 and 16	October 26, 1983 Regulation	21(2), 29(1)(a), (b), 29(2), 35(c), 42(2), 59(2), 60(c), 61(2), 73(1)(a), 75, 81(5)(a), (6), 142(1), 154 amended	Reg. 393/83, Pt. II, V. 26, p. 607
Labour Code Amendment Act 1984, R.S.B.C. 1984, c. 24	June 8, 1984 Regulation	1 - 19 except 13	Reg. 167/84, Pt. II, V. 27, p. 221.
	August 27, 1984 Regulation	13	Reg. 274/84, Pt. II, V. 27, p. 358
Commercial Arbitration Act S.B.C. 1986, c. 3, s. 47	July 4, 1986 Regulation	99(4) repealed	Reg. 148/96
Industrial Relations Reform Act, 1987, S.B.C. 1987, c. 24....	July 27, 1987 Regulation	The whole *Act* except s. 2(e) and that part of s. 60 that enacts s. 137.97 to s. 137.99	Reg. 246/87
Miscellaneous Statutes Amendment Act (No. 5), 1987, S.B.C. 1987, c. 60, s. 9	December 17, 1987 Royal Assent	26(2) amended	
Budget Measures Implementation Act, 1989, S.B.C. 1989, c. 1, s. 5	Retroactive to April 1, 1988	123.1 amended	
Labour Relations Code, S.B.C. 1992, c. 82	January 18, 1993 Regulation	The whole *Code* except 53, 54, 83, 86, 87, 104, 105. *Industrial Relations Act*, R.S.B.C. 1979, c. 212 repealed except s. 74 - 78, 95 and 96	Reg. 6/93
Labour Relations Code, S.B.C. 1992, c. 82	May 1, 1993 Regulation	53, 54 of *Code*. *Industrial Relations Act*, R.S.B.C. 1979, c. 212, s. 74 - 78 repealed	Reg. 6/93

Table A

Statutory History of the *Labour Relations Code* -- Continued

Statute	Date and Manner of Coming into Force	Sections in Force	B.C. Gazette References
Labour Relations Code, S.B.C. 1992, c. 82	July 15, 1994 Regulation	83, 86, 87, 104, 105 of the *Code*. *Industrial Relations Act*, R.S.B.C. 1979, c. 212, s. 95 and 96 repealed	Reg. 247/94
Labour Relations Code, S.B.C. 1992, c. 82	July 15, 1994 Regulation	105(10) of *Code* (transitional).	Reg. 248/94
Miscellaneous Statutes Amendment Act (No. 2) 1995, S.B.C. 1995, c. 12, s. 10	June 8, 1995 Royal Assent	105(10) amended	
Employment Standards Act, S.B.C. 1995, c. 38, s. 132	November 1, 1995 Regulation	54(3) amended	Reg. 396/95
Human Rights Amendment Act, 1995, S.B.C. 1995, c. 42, s. 8	October 1, 1996 Regulation	31(b) amended	Reg. 87/96
Statute Revision Act [Section 5 (1)]	April 21, 1997 Order in Council	*Labour Relations Code* subsections re-numbered	Reg. 92/97
Miscellaneous Statutes Amendment Act, 1997, S.B.C. 1997, c. 27, s. 24 and 34	Retroactive to May 14, 1997. Royal Assent July 28, 1997.	103 repealed	
Labour Relations Code Amendment Act, 1998, S.B.C. 1998, c. 33	August 1, 1998 Regulation	21(1) amended and Part 4.1 added	Reg. 274/98
Regulatory Streamlining Miscellaneous Statutes Act, 1998, S.B.C. 1998, c. 42, s.21	July 31, 1998 Regulation	51 amended	Reg. 280/98
Miscellaneous Statutes Amendment Act (No. 3), 1999, S.B.C. 1999, c. 39, s. 38	July 15, 1999 Royal Assent	37(1) amended	
Skills Development and Labour Statutes Amendment Act, S.B.C. 2001, c. 33	August 16, 2001 Royal Assent	23 and 26 and Part 4.1 repealed; 72(2.1) added; various amendments	

Table B

Statutes Referencing the *Labour Relations Code*

Statute	Sections
Access to Abortion Services Act, R.S.B.C. 1996, c. 1	16
Assessment Authority Act, R.S.B.C. 1996, c. 21	14
British Columbia Transit Act, R.S.B.C. 1996, c. 38	7
College and Institute Act, R.S.B.C. 1996, c. 52	1, 43, 45, 48(3), (4), (5), (7)
Correction Act, R.S.B.C. 1996, c. 74	16(2)
Emergency Communications Corporations Act, S.B.C. 1997, c. 47	11(1), (2)
Employment Standards Act, R.S.B.C. 1996, c. 113	1, 22(1)(a), 87(2), 105(3)
Fire and Police Services Collective Bargaining Act, R.S.B.C. 1996, c. 142	1, 2, 3(2), 4(4), 5
Fishing Collective Bargaining Act, R.S.B.C. 1996, c. 150	1, 3, 5(3), 6-12
Freedom of Information and Protection of Privacy Act, R.S.B.C. 1996, c. 165	Schedule 2
Greater Vancouver Transit Services Settlement Act, S.B.C. 2001, c. 25	2, 3, 7, 14, 15
Greater Vancouver Transportation Authority Act, S.B.C. 1998, c. 30	12(2), 13(1), 37(8) & (9)
Health Authorities Act, R.S.B.C. 1996, c. 180	1, 19.2, 19.9(2) & (8), 19.92(2)
Health Care Services Collective Agreements Act, S.B.C. 2001, c. 26	19.1, 19.2, 19.5, 19.6, 19.9, 19.92
Human Rights Code, R.S.B.C. 1996, c. 210	1
Hydro and Power Authority Act, R.S.B.C. 1996, c. 212	32(7)(q)
Hydro and Power Authority Privatization Act, R.S.B.C. 1996, c. 213	15(3), (4)
Institute of Technology Act, R.S.B.C. 1996, c. 225	1, 21
Job Protection Act, R.S.B.C. 1996, c. 240	5(2)
Labour Relations Code, R.S.B.C. 1996, c. 244	Refer to Table A
Local Government Act, R.S.B.C. 1996, c. 323	200(1)(b), 203, 738.4(1)
Members' Conflict of Interest Act, R.S.B.C. 1996, c. 287	14(9)
Mines Act, R.S.B.C. 1996, c. 293	1
Pension Benefits Standards Act, R.S.B.C. 1996, c. 352	1(1)
Police Act, R.S.B.C. 1996, c. 367	26(3), 35(3), 65(1)(b)
Public Education Collective Agreement Act, S.B.C. 1998, c. 41	2(4)
Public Education Labour Relations Act, R.S.B.C. 1996, c. 382	3(1), 6(2), 7(6), 10(3)
Public Education Support Staff Collective Bargaining Assistance Act, S.B.C. 2000, c. 2	11(2), 12
Public Sector Employers Act, R.S.B.C. 1996, c. 384	7(3), 10, 11, 12, 13, 14
Public Service Labour Relations Act, R.S.B.C. 1996, c. 388	1, 2(1), 23
Residential Tenancy Act, R.S.B.C. 1996, c. 406	51(3)
School Act, R.S.B.C. 1996, c. 412	20(2), 29, 117(1)(e)
Skills Development and Labour Statutes Amendment Act, S.B.C. 2001, c. 33	Refer to Table A
Vancouver Charter, S.B.C. 1953, c. 55	175A
Workers Compensation Act, R.S.B.C. 1996, c. 492	86(7), 93(5), 106

Table C

Rules and Regulations Under the *Labour Relations Code*

Effective Date	Regulation / Rule	Reference
January 14, 1993	Labour Relations Regulation[1]	Reg. 7/93; O.C. 28/93
January 18, 1993	Labour Relations Board Rules[2]	Ministerial Order MN 4; O.C. and Ministerial Order Resume, Vol. 20, No. 1
February 25, 1993	Labour Relations Regulation (minor amendments)	Reg. 59/93 O.C. 209/93
July 15, 1994	Labour Relations Regulation S. 105 Transitional	Reg. 248/94
August 2, 1994	Labour Relations Board Rules[3]	Ministerial Order M208; O.C. and Ministerial Order Resume, 1994, Vol. 21, No. 26
June 1, 1999	Labour Relations Regulation[4]	Reg. 154/99 O.C. 646/99
November 17, 2001	Labour Relations Board Rules[5]	Ministerial Order M284; O.C. and Ministerial Order Resume, 2001, Vol. 28, No. 35

[1] Reg. 7/93 established the Regulations passed pursuant to Section 159 of the *Labour Relations Code* and repealed Reg. 147/87 (the former Industrial Relations (Voting) Regulation).

[2] Ministerial Order M4 made the Labour Relations Board Rules and repealed the former Industrial Relations (Practice and Procedure) Regulation, which had been referred to as the Industrial Relations Council Rules.

[3] Ministerial order M208 approves the Labour Relations Board Rules, 1994, and repeals "any previous Labour Relations Board Rules".

[4] Regulation 154/99 amends Regulation 7/93 by adding Section 3.1 (Membership evidence – additional requirements for construction industry).

[5] Ministerial Order M284 corrects a typographical error in Rule 2(3) by striking out "sub-rule 2(d)" and substituting "sub-rule 2(c)".